

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	31.07.2018	<p style="text-align: center;"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b></p> <p style="text-align: center;"><b>Appeal No. 1988/2015</b></p> <p style="text-align: center;">Date of Institution ... 03.11.2015 Date of Decision ... 31.07.2018</p> <p>Fazal Wahid, Junior Clinical Technician (Pharmacy), Civil Dispensary Gulibagh, Mardan.-----<b>Appellant</b></p> <ol style="list-style-type: none"> <li>1. The Government of Khyber Pakhtunkhwa through Secretary Health, Peshawar.</li> <li>2. The Secretary to Government of Khyber Pakhtunkhwa finance Department, Peshawar.</li> <li>3. The Director General Health Services, Khyber Pakhtunkhwa Peshawar.</li> <li>4. The Commissioner, Afghan Refugees, Headquarters, Phase-5 Hayatabad, Khyber Pakhtunkhwa Peshawar.</li> <li>5. The District Health Officer, Mardan-----<b>Respondents</b></li> </ol> <p style="text-align: center;"><b>Mr. Muhammad Hamid Mughal-----Member</b> <b>Mr. Ahmad Hassan-----Member</b></p> <p style="text-align: center;"><b><u>JUDGMENT</u></b></p> <p style="text-align: center;"><b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> Learned counsel for the appellant and Mr. Riaz Paindakheil learned Assistant Advocate General for the respondents present.</p> <p>2. Appellant Junior Clinical Technician (Pharmacy) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for counting his service rendered by him as compounder in Afghan Refugees Project on contract basis w.e.f 11.05.1982 till his retrenchment on 31.12.1994, towards the present provincial</p>

service for the purposes of pay, pension and other alike benefits.

3. Learned counsel for the appellant argued that the appellant was initially appointed as compounder in the Afghan Refugees Project on 11.05.1982 and later on retrenched w.e.f 31.12.1994. Further argued that vide appointment order dated 23.05.1995 the appellant was then appointed as Dispenser (BS-06) in the Health Department Khyber Pakhtunkhwa which post has now been upgraded and re-designated as Junior Clinical Technician Pharmacy (BS-12). Further argued that the employees of Afghan Refugees Project were subsequently declared as civil servants and were thus entitled for pensionary and retrenchment benefits. Learned counsel for the appellant while referring to the judgments of the Hon'ble Superior Courts argued that the appellant is also entitled for regularization/counting of his previous service towards the present service in the light of Civil Service Regulations (C.S.R.)<sup>NO</sup> 365(a), 420 (h) and 422.

4. As against that learned Assistant Advocate General resisted the present appeal and argued that the appellant was a contractual employee of Afghan Refugee Health Project and therefore in that capacity he could not be treated as civil servant.

5. Arguments heard. File perused.


6. Case of the appellant is that he should be considered as Federal Government employee w.e.f 11.05.1982 till 31.12.1994 and as such his previous service as a federal civil servant be counted towards his present provincial service.

7. It is an admitted position that the appellant earlier approached Federal Service Tribunal for the same relief. However the Federal Service Tribunal vide its judgment dated 29.04.2010 passed in service appeal No. 145 (P) C.S/2007 dismissed the appeal of the appellant also on the ground that the appellant was a contractual employee of project and he was not being paid by the government for his service in the project but paid by Afghan Refugees Organizations, therefore he could not equate himself with employees of government and that since he was a project employee therefore he could not claim to be at par with other civil servants.

8. There is no denial that the judgment of Federal Service Tribunal bearing No. 145 (P) C.S/2007 still holds field. Consequently this Tribunal is constrained to dismiss the present appeal, and as such the present appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)  
Member



(Muhammad Hamid Mughal)  
Member

ANNOUNCED  
31.07.2018

31.07.2018

Learned counsel for the appellant and Mr. Riaz Paindakheil learned Assistant Advocate General for the respondents present.

Vide separate judgment of today of this Tribunal placed on file, the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)  
MEMBER


  
(MUHAMMAD HAMID MUGHAL)  
MEMBER

**ANNOUNCED**  
**31.07.2018**

08.03.2018

Junior to counsel for the appellant and Mr. Riaz Khan Paindakheil Assistant Advocate General for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is ill. Adjourned. To come up for arguments on 14.05.2018 before D.B

  
(M.Amin Khan Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member


1.05.2018

The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore, the case is adjourned. To come up on 30.07.2018.

  
READER

30.07.2018

Appellant with counsel and Mr. Riaz Ahmad Painda Kheil, Assistant AG for the, respondents present. Partial arguments of learned counsel for the appellant heard. Requested for adjournment. Adjourned. To come up for further arguments on 31.07.2018 before D.B.

  
(Ahmad Hassan)  
Member (E)

(Muhammad Hamid Mughal)  
Member (J)

on the, in presence of the learned counsel for the respondents and the appellant. The learned counsel for the respondents have been directed to pay their own costs. The case is adjourned for further arguments on 31.07.2018 before D.B.

28.04.2017

Appellant in person and Mr. Ziaullah, Government Pleader for respondents present. Appellant seeks adjournment as his counsel is busy in the august Supreme Court of Pakistan. Adjourned for final hearing to 22.08.2017 before D.B.

  
Member

  
Chairman

22/8/2017

Clerk of counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Clerk of counsel for the appellant requested for adjournment as his counsel is not available due to strike of the bar. To come up for arguments on 16/11/2017 before DB.

  
(GUL ZEB KHAN)  
MEMBER

16.11.2017

Clerk of counsel for the appellant and Addl. AG for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. To come up for arguments on 11.01.2018 before the D.B.


  
Member

  
Chairman

11.01.2018

Clerk to counsel for the appellant present. Learned Asst: AG for respondents present. Clerk to counsel for the appellant requested for adjournment due to non availability of his counsel. Adjourned. To come up for arguments on 08.03.2018 before D.B.

  
(Ahmad Hassan)  
Member(E)

  
(M. Hamid Mughal)  
Member (J)

12.05.2016

Clerk to counsel for the appellant, M/S Muhammad Arshed, SO and Irshad Muhammad, SO (lit.) alongwith Addl: AG for respondents present. Para-wise comments on behalf of respondents No. 1 to 3 submitted. The learned Addl: AG relies on the written statement submitted by respondents No. 1 to 3 on behalf of respondents No. 4 and 5. The appeal may be placed before D.B for rejoinder and final hearing for 08.08.2016. The Chairman may assign the appeal to appropriate D.B.



Member

08.08.2016

Counsel for the appellant, M/S Amjid Ali, Assistant and Yar Gul, Senior Clerk alongwith Additional AG for respondents present. Rejoinder on behalf of the appellant submitted, copy whereof handed over to learned Additional AG. To come up for arguments on 15-12-16 before D.B.



Member



Member

15.12.2016

Clerk counsel for the appellant and Additional AG for the respondents present. Clerk counsel for the appellant requested for adjournment as counsel for the appellant is busy before the Hon'ble Peshawar High Court, Peshawar. Adjournment granted. To come up for arguments on 28.04.2017 before D.B.



(ASHFAQUE TAJ)  
MEMBER



(MUHAMMAD AAMIR NAZIR)  
MEMBER

25.11.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was initially appointed as Compounder in the Afghan Commissionerate on temporary basis with effect from 11.5.1982 and that he later on joined the service of Afghan Commissionerate as Dispenser on 23.5.1995. That service between 11.5.1982 to 31.12.1994 was not considered towards the pensionary benefits of the appellant regarding which he preferred departmental appeal which was rejected vide order dated 8.10.2015 and hence the instant service appeal on 18.11.2015.

That this Tribunal has allowed a similar case in appeal No. 38/2011 vide judgment dated 1.8.2011 which judgment was upheld by the august Supreme Court of Pakistan by worthy judgment dated 3.1.2013.

That the appellant is entitled to treatment extended to similarly placed employee referred to above.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 22.3.2016 before S.B.

  
Chairman

22.03.2016

Agent of counsel for the appellant, M/S Muhammad Arshed, SO and Mukhtiar, Junior Clerk alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 12.5.2016 before S.B.

  
Chairman

Appellant Deposited  
Security & Process Fee







Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1288/2015

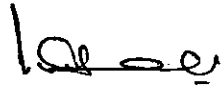
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18.11.2015	<p style="text-align: center;">The appeal of Mr. Fazal Wahid resubmitted today by Mr. Khaled Rehman Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>25-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2		

The appeal of Mr. Fazal Wahid Junior Clinical Technician Health Department Mardan received to-day i.e. on 03.11.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Page No. 11, 20 to 24 and 26 of the appeal are illegible which may be replaced by legible/better one.

No. 1705 /S.T,

Dt. 03/11 /2015

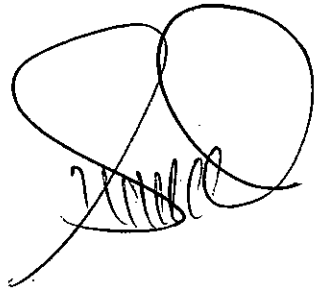
  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Khaled Rehman Adv. Pesh.

*Respected Sir*

*The above objection has been*

*Removed.*



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1288 /2015

Fazli Wahid

The Govt. and others

Versus

.....Appellant

.....Respondents

**INDEX**

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-4
2.	Appointment order of appellant as Compounder in Afghan Refugees	11.05.1982	A	5-6
3.	Retrenchment Order	13.12.1994	B	0-7
4.	Appointment order of appellant as Dispenser	23.05.1995	C	0-8
5.	Letters	19.06.1995 09.12.1995 23.07.2000	D	9-13
6.	Judgments of Superior Courts	31.11.1993, 03.12.1990	E	14-29
7.	Letters thereby previous services of the similar employees serving in identical circumstances have been regularized/counted		F	30-34
8.	Departmental Representation		G	35-37
9.	Impugned order	08.10.2015	H	0-38
10.	Judgment of this Hon'ble Tribunal in Service Appeal No.38/2011	01.08.2011	I	39-41
11.	Judgment of the Apex Court in C.P.No.552-P/2011	03.01.2013	J	42-44
12.	Wakalat Nama			

Appellant

Through

**Khaled Rahman**  
Advocate,  
Supreme Court of Pakistan  
3-D, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458  
Cell # 0345-9337312

Dated: 3 / 11 /2015

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1288 /2015

Fazli Wahid,  
 Junior Clinical Technician (Pharmacy),  
 Civil Dispensary Guli Bagh, Mardan.....*Appellant*

Versus

1. The Govt. of Khyber Pakhtunkhwa  
 through Secretary Health  
 Civil Secretariat, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa  
 Finance Department,  
 Civil Secretariat, Peshawar.
3. The Director General  
 Health Services,  
 Khyber Pakhtunkhwa, Peshawar.
4. The Commissioner,  
 Afghan Refugees,  
 Headquarters, Phase - 5, Hayatabad,  
 Khyber Pakhtunkhwa, Peshawar.
5. The District Health Officer, Mardan.....*Respondents*

**A.W.F. Province  
 Service Tribunal**

**Diary No. 1315**

**dated 03-11-2015**

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR REGULARIZATION/COUNTING OF THE SERVICE RENDERED BY THE APPELLANT UNDER THE RESPONDENT NO.4 W.E.F. 11.05.1982 TO 31.12.1994 TOWARDS THE PRESENT SERVICE IN THE HEALTH DEPARTMENT FOR THE PURPOSE OF PAY, PENSION AND OTHER ALLIED BENEFITS WITH CONDONATION OF BREAK W.E.F. 01.01.1995 TO 22.05.1995.

**PRAYER:**

On acceptance of the instant appeal, the Respondents be directed to regularize/count the service rendered by the appellant under Respondent No.4 w.e.f. 11.05.1982 to 31.12.1994 towards the

re-submitted to 

and filed

  
 Registrar

present service in the Health Department for the purpose of pay, pension and other allied benefits with condonation of break w.e.f. 01.01.1995 to 22.05.1995 with all other back benefits with adjustment/repayment of amounts already drawn by the appellant.

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Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant was initially appointed as Compounder under Respondent No.4 vide order dated 11.05.1982 (*Annex:-A*) and after rendering service till 31.12.1994, his services were retrenched vide order dated 13.12.1994 w.e.f. 31.12.1994 (*Annex:-B*).
2. That appellant was then appointed as Dispenser (BPS-6) in the Health Department vide order dated 23.05.1995 (*Annex:-C*) after observing all the codal formalities and now the post has been upgraded and re-designated as Junior Clinical Technician (Pharmacy) (BPS-12) and posted at Civil Dispensary Guli Bagh, Mardan. At the moment appellant has at his credit more than 20 years service in the Health Department while he had more than 12 years in the Afghan Refugees Commissionerate.
3. That the employees of the Afghan Refugees Organization were subsequently declared as temporary civil servants and thus entitled to compensatory pensionary and retrenchment benefits vide letters dated 19.06.1995, 09.12.1995 and 23.07.2000 (*Annex:-D*) and Judgments of the superior Courts dated 31.11.1993 and 03.12.1990 (*Annex:-E*).
4. That the previous services of the similar employees serving in identical circumstances have been regularized/counted vide letters (*Annex:-F*), therefore, appellant is also entitled to the

same relief under the principle of consistency and equality before law.

5. That appellant, appellant earlier approached the Federal Service Tribunal, Islamabad for the subject relief but the same was turned down as appellant was now the provincial civil servant, therefore, has preferred a departmental Representation (*Annex:-G*) on 15.06.2015 to Respondent No.3 for counting his previous service towards the present one but the same was rejected vide impugned order dated 08.10.2015 (*Annex:-H*), hence this appeal inter-alia on the following grounds:-

**Grounds:**

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to regularize/count the previous service of the appellant towards the present service, which is unjust, unfair and hence not sustainable in the eye of law.
- B. That similarly placed employees namely Amir Muhammad, Mir Khawas Khan, Mir Ahmad Khan, Fazli Hakim and Mr. Israr etc. have been granted pensionary benefits and therefore, appellant is also entitled to the same relief under the principle of consistency and equality before law.
- C. That the appellant had rendered more than 12 years service in the Afghan Refugees Commissionerate which has been declared as temporary Federal Service and even pensionary benefits have been allowed to other employees of Afghan Refugees Commissionerate, therefore, petitioner is also entitled to the same relief and the refusal on the part of Respondents is

not sustainable under the law.

- D. That the appellant is entitled for regularization/counting of his previous service towards the present service under Articles-365(a), 420(h) and 422 of the Civil Service Regulations alongwith other enabling provisions as held by this Hon'ble Tribunal in Service Appeal No.38/2011 decided on 01.08.2011 (*Annex:-I*) which was upheld by the Apex Court in C.P.No.552-P/2011 decided on 03.01.2013 (*Annex:-J*).
- E. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

  
Appellant

  
Khaled Rahman,  
Advocate,  
Supreme Court of Pakistan

Dated: 3 / 11 / 2015

5  
ANNEX A  
Legible Copy

OFFICE OF THE PROJECT DIRECTOR HEALTH AFGHAN REFUGEES NWFP PESHAWAR.

OFFICE ORDER

Mr. Fazal Wahid S/o Mr. Abdul Noor Khan is appointed as **Compowder** at the rate of Rs. 2500/- (two Thousand Five Hundred only) P.M in the Afghan Refugees Health Project at south. W. wana.

His appointment is on contract basis from the date of his arrival to 30 June 1982, which is renewable on six-monthly basis and will not be treated as Government Services nor it will entitle him any other facilities or allowances form the Government.

His Services are on temporary basis and can be terminated without assigning any reason.

On his appointment as **Compowder** he is posted to Bajauar Agency.

S/d\_  
Project Director Health  
Afghan Refugees NWFP  
Peshawar

No. PDH (AR)/Apptt:P -F/ 3131-34

Dated: 11-05-1982

Copy of the above is forwarded to the:-

1. Agency Surgeon Bajauar for information and necessary action. His arrival report may be furnished to this office for further necessary action.
2. Mr. Fazal Wahid S/o Mr. Abdul Noor Mohala Bari Cham House # 150 Post office Hoti Mardan. The enclosed acceptance latter may be furnished to this office through respective Agency Surgeon.
3. UNHCR I C Gul Mohar Lain University Town Peshawar.
4. Office Accountant for information and necessary action.

ATTESTED



(4) A

1

6

OFFICE MEMO

Mr. Fazli Zahid S/O Abdul Fear is appointed as Compounder at the rate of Rs. 1100/- (Rupees, One thousand five hundred only) P.M. in the Afghan Refugee Health Project.

His appointment is on contract basis from the date of his arrival by 20 June 1982, which is reasonable on six monthly basis and will not be treated as Government services and it will entitle him to any other facilities or allowances from the Government.

His services are on temporary basis and can be terminated with or without any reason.

On his appointment as Compounder he is posted to Dejour Agency Vico Just Aisnt. His Compounder who has transferred, under the control of Agency Harrison Dejour.

Project Director Health  
Afghan Refugee Health P.O.  
Fayetteville

Dated: 11/5/1982  
11.5.1982

NO. 3131-34

Copy furnished to these-

1. Agency Surgeon, Dejour at Har for information and necessary action. His arrival report may be furnished to this Project for further necessary action.
2. Mr. Fazli Zahid S/O Abdul Fear, resident of Nohallah East Camp, East Karza House No. 150. The enclosed acceptance letter may be furnished to this office through representative of Agency Dejour.
3. UNHCR's 1-4th North Lane P.O. Box No. 424 University Town Fayetteville.
4. Office Accountant for information and necessary action.

ATTESTED

Project Director Health  
Afghan Refugee Health P.O.  
Fayetteville

No. 1178 /FSMO/AR/PESH:

Dated      / 12/94.

From,

The F.S.M.O. Afghan Refugees,  
District Peshawar/Mardan.

7

To,

Mr. Fazal Wahid Dispenser, ✓  
C/O M.O. I/C BHU Badaber.

ANNEX B

SUBJECT: - RETRENCHMENT.

Reference Project Director health office order No. PDH(AR)  
300-A/7248-57/Dated 08/12/1994.

Due to retrenchment in Afghan Refugees BHUs, your service  
is hereby retrenched w.e.f 31/12/1994 A.N. You are therefore directed  
to hand over complete charge to your superior before 31/12/94 A.N.

Cost of any shortages will be deducted from your salary  
as well as retrenchment benefits. Proper charge report handing/  
taking over should be submitted to this office of the undersigned.

F.S.M.O. Afghan Refugees,  
District Peshawar/Mardan.

ATTESTED

As per result and the interview dated 1.1.1995.

held in this Directorate Fazale Wahid ~~against the vacant post of~~  
a qualified Dispenser is hereby offered the Post of Med. Technician  
in BPS- 6 (1440-73-2535) Plus usual allowances as  
admissible under the rules and Posted in the D.H.O. Swabi.  
on the following terms and conditions:-

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- 1/- He is domiciled in NWFP.
- 2/- He is declared Medically fit for Govt: Servants. *ANNEX C*
- 3/- He will not be entitled to any PA/DA for Medical Examination and joining the first appointment.
- 4/- He is liable to serve any where in NWFP.
- 5/- He will be governed by such rules and orders as may be issued by the Govt: for the category of Govt: Servants to which he belongs.
- 6/- If he wishes to resign at any time he will resign in written and will continue to serve the Govt: till the acceptance of resignation by the competent authority.
- 7/- His appointment in the Health Services Deptt: is purely on Temporary basis and his services can be terminated without any reasons being assigned at any time irrespective of the fact that he is holding the post for more than one year which he was originally recruited.

When he accepts the offer on the above mentioned conditions he should please report to the D.H.O. Swabi. at his own expenses within Seven days of the receipt of this offer, failing which the offer of appointment will be considered as cancelled.

**N.B.**

You will/have no legal right to challenge your termination in case a qualified person is available.

*SA*  
DIVISIONAL DIRECTOR  
HEALTH SERVICES, PESHAWAR.

NO 5828-31/DDHS/E dated Peshawar the 23/5/1995.

Copy forwarded to the:

- 1. Health Minister NWFP, Peshawar for Information Please.
- 2. Director General Health Services, NWFP, Peshawar for information.
- 3. Mr. Fazale Wahid S/O Abdul Noor Willaag P.O. Garhi Daulat  
Zai Kapeera Tehsil and District Mardan.
- 4. Distt. Health Officer Swabi.
- 5. Medical Supdt: PHS Hospital
- 6. Agency Surgeon PHS Hospital
- 7. Medical Supdt: AHQ Hospital
- 8. EDr. (information and n/action).  
PF.

**ATTESTED**

*[Signature]*  
DIVISIONAL DIRECTOR  
HEALTH SERVICES, PESHAWAR.

GOVERNMENT OF PAKISTAN  
CABINET SECRETARIAT  
ESTABLISHMENT DIVISION

By no 104 (50)  
20-6-1995

No. 3/7/95-R:2

Islamabad, the 19th June, 1995

OFFICE MEMORANDUM

ANNEX D  
ANNEX D

9

SUBJECT: - GRANT OF PENSIONARY BENEFITS TO THE AFGHAN REFUGEES ORGANIZATION EMPLOYEES.

The undersigned is directed to refer to the States and Frontier Regions Division's O.M.No.P.2(2)-AR.111/81, dated the 7th May, 1995 on the above subject and to state that the matter has been considered and the view held is that since the office of the Chief Commissionerate for Afghan Refugees, Islamabad and its regional offices at Karachi, Peshawar and Quetta have been declared as an attached department of the States and Frontier Regions Division, the employees of the said organization are civil servants within the meaning of the Civil Servants Act, 1973 and the rules made thereunder, subject to the condition that all such employees have been recruited under the provisions of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973.

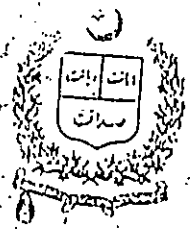
2. This issue with the approval of Establishment Secretary.

*Arman ul Haq*  
(AMIR-UL-HAQ)  
Section Officer 19/6/95

States and Frontier Regions Division,  
(Mr. Hidayat Ullah, Deputy Secretary),  
Government of Pakistan,  
Islamabad.

ATTESTED

D



ACCOUNTANT GENERAL, PAKISTAN REVENUES,  
PESHAWAR

*(Handwritten initials)*  
*(Handwritten initials)*  
**10**

No. *(Handwritten)* / FCTIC / CAR / 96-97/754 Dated 2.12.1996

To  
The Commissioner,  
Afghan Refugees,  
N.W.F.P. Peshawar.

Subject:-  
Grant of Pension by the honourable Federal Service Tribunal to Mr. Hawas Khan Driver of UNHCR.

Memo:-  
Please refer to your No. CAR/AO/Pension/1149 dated Peshawar the 30.11.1996.

Since the honourable Federal Services Tribunal has decided the case in favour of the Driver concerned and allowed him necessary pensionary benefits. It is therefore requested his pension documents along with service Book may be prepared at the earliest and submit the same to this office in order to finalize his case without further delay.

*(Handwritten signature)*

Accounts Officer (Pension),  
AGPR, Sub Office, Peshawar.

*(Handwritten initials)*  
9/12/96

**ATTESTED**

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OFFICE OF THE  
COMMISSIONER AFGHAN REFUGEES  
NWFP, PESHAWAR

No. CAR/AO(Pension) / 11/95

DATED: PESHAWAR, THE 30/11/96

To:

The Additional Accountant General,  
Pakistan Revenues, Sub-Office,  
Peshawar.

Subject:

GRANT OF PENSION BY THE HONBLE FEDERAL SERVICE  
TRIBUNAL TO Mr. HAWAS KHAN, DRIVER OF UNHCR  
FUNDED PROJECT.

Re:

Mr. Hawas Khan had been serving as driver w.o.f. 20.1.1983  
to 31.5.1994 in O.I.Tankara Project funded by UNHCR. He rendered  
ten years, seven months and twelve days service and consequent upon  
his retrenchment he was paid Retrenchment Benefit amounting to  
Rs. 40,748/-, among others, in accordance with approved formula vide  
S.No. 51 of the statement received from UNHCR with their letter No.  
Pesh: CAR/095 dated 17th June, 1994 (copy enclosed).

Thereafter he preferred appeal to the Honble Tribunal  
for the grant of pension on 15.5.1995 which was accepted, contested  
and decided in his favour on 23.10.1995 that: "the appellant would  
be entitled to pensionary benefits as allowed by the Honble  
Supreme Court as decided in its judgement in civil appeal No. 574/  
1992 if he has a service more than ten years at his credit." (copy  
of judgement enclosed).

The Commissioner, Afghan Refugees (NWFP) lodged appeal  
before the Honble Tribunal against their judgement for review but  
Federal Service Tribunal stick to their judgement and directed the  
Commissionerate to implement the decision already made with regard  
to pensionary benefits (copy enclosed).

He was purely an employee of UNHCR Project and therefore  
he has never drawn pay from AQPR and consequently no service book  
for qualifying service and IPC etc. are available for production.  
However, his service particulars are produced below for consider-  
tion and necessary action in compliance with F.S.T's decision:-

- 1) - Name..... Mr. Hawas Khan.    2) - Father's name..... Zahat Khan.
- 3) - Address: Village Badabar, Teh: & District, Peshawar.
- 4) - Date of birth..... Not known.
- 5) - Date of appointment as driver..... 20-10-83.
- 6) - Date of retrenchment..... 31-05-94.
- 7) - Length of service..... 10 years 7 months & 12 days.
- 8) - Rate of Pay: Rs. 2499/- P.M.
- 9) - Gross Pension: Rs. 641/41/-

Encls: As stated above:

(IMRAN HUSSAIN KHAN)  
ADDITIONAL COMMISSIONER (GENERAL)  
AFGHAN REFUGEES NWFP, PESHAWAR.

30/11/96

ATTESTED

Precedent  
J 6/0/96

11

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OFFICE OF THE  
COMMISSIONER AFGHAN REFUGEES  
NWFP PESHAWAR

No.CAR/AO (Pension) / 1149

DATED: PESHAWAR, THE 28/11/96

To:

The Additional Accountant General,  
Pakistan Revenues, Sub-Office,  
Peshawar.

Subject:

GRANT OF PENSION BY THE HON'BLE FEDERAL SERVICE  
TRIBUNAL TO MR. HAWAS KHAN, DRIVER OF UNHCR FUNDED  
PROJECT.

Memo:

Mr. Hawas Khan had been serving as Driver w.e.f. 20.1.1983 to 31.5.1994. In Oil Tankers Project funded by UNHCR. He rendered ten years seven months and twelve days service and consequent upon his retrenchment he was paid Retrenchment Benefit amounting to Rs.40,348/- among others, in accordance with approved formula vide S.No.51 of the statement received from UNHCR with their letter No.Pesh:/CAR/095 dated 19<sup>th</sup> June, 1994 (copy enclosed).

Thereafter, he preferred appeal to the Hon'ble Tribunal for the grant of Pension on 15.5.1995 which was accepted, contested and decided in his favour on 23.10.1995 that: "the appellant would be entitled to pensionary benefits as allowed by the Hon'ble Supreme Court as decided in its Judgment in Civil Appeal No.574/1992 if he has a service more than ten years at his credit". "(copy of Judgment enclosed).

The Commissioner, Afghan Refugees NWFP lodged appeal before the Hon'ble Tribunal against their Judgment for review but Federal Service Tribunal at \_\_\_\_\_ to their Judgment and directed this Commissionerate to implement the decision already made with regard to pensionary benefits (copy enclosed).

He was purely an employee of UNHCR Project and therefore he has never drawn pay from AGPR and consequently no service book for qualifying service and LPC etc. are available for production. However, his service particulars are reproduced below for consideration and necessary action in compliance with F.S.T.'s decision:

- 1)- Name.....Mr. Hawas Khan.
- 2)- Father's name...Zabat Khan
- 3)- Address: Village Badaber, Teh: & District Peshawar.
- 4)- Date of birth.....Not known
- 5)- Date of appointment as Driver.....20-10-83
- 6)- Date of retrenchment ..... 31-05-94.
- 7)- Length of ser vice..... 10 years 7 months & 12 days.
- 8)- Rate of Pay: Rs.2499/- P.M.
- 9)- Gross Pension: Rs.641/41 P.M

Encls: As stated above

Sd/-

(IMRANZEB KHAN)  
ADDITIONAL COMMISSIONER (GENERAL)  
AFGHAN REFUGEES NWFP PESHAWAR



CM/S.1401

03-7-2001

44

Government of Pakistan  
Kashmir Affairs & Northern Areas and  
States & Frontier Regions Division.

Established the 3rd July, 2000

12

NOTIFICATION

No. F.1(6)-AR.111/92. In light of Ministry of Finance letter No.9(4)Reg.6/94-III, dated 01-02-2000, Auditor General of Pakistan letter No.Reg:11/21.96/C/37, dated 07-03-2000, Supreme Court of Pakistan decision dated 28-01-1998 in CPLSA No.(933)/97 and earlier decision of Supreme Court of Pakistan No.574/1992 dated 07-02-1994, the employees of Afghan Refugees Organization, NWFP, Baluchistan and Punjab who have put in ten(10) or more than (10) years of continuous service and to be held as temporary Civil Servants, under the definition of Civil Servants Act 1973, for all purposes contained therein provided they were recruited against temporary sanctioned posts prior to 20-02-1991 and have been drawing pay/salaries from Government Exchequer through AGPR, irrespective of the fact that they have been recruited on temporary or contract basis and they would be entitled to compensatory pensionary benefits or retrenchment benefits

xxxxxx as already allowed under SAFRON Division's sanction letter No.F.1(6)-AR.111/92, dated 27-11-1994.

- The notification is issued in specific terms and in special circumstances for ARO employees only in light of Supreme Court decisions and is not meant or to be referred to any other Department/service/person.
- This issues with the concurrence of the Office of Auditor General of Pakistan and Ministry of Finance vide their letter No.Reg.11/21/C/96/153, dated 7-6-2000 and No.F.9(1)-Reg:6/94-HI, dated 24-6-2000 respectively.

S.C.  
Do all concerned  
13  
07

*Amir*  
(AMIR KHAN.)  
Section Officer

The Manager,  
Printing Corporation of  
Pakistan Press,  
Karachi.

P...2

To P/46

PAICAR/HRP  
DAILY REGISTER  
DATED 7.7.2001  
PESHAWAR

Commissioner Afghan Refugees  
D/1808  
13/7/2000  
N.W.F.P. Peshawar

ATTESTED

copy to L.A  
on 06/5/00



13

Copy to:-

- 1. The Auditor General of Pakistan with reference to their letter No.Reg-11/21/C/96/153, dated 7-6-2000.
- 2. Ministry of Finance with reference to their letter No.F.9(1)-Reg.6/94-III, dated 24-6-2000.
- 3. The Accountant General of Pakistan Revenue, Islamabad.
- 4. The Additional Accountants General (Pakistan Revenue) Sub Office, Peshawar, Quetta and Lahore.
- 5. The Registrar of Supreme Court of Pakistan, Islamabad.
- 6. The CCAR, Islamabad.
- 7. The Commissioners Afghan Refugees, NWFP, Punjab and Balochistan.

*(Signature)*  
 ( AMIR KHAN )  
 Section Officer

ATTESTED

IN THE SUPREME COURT  
APPELLATE JURISDICTION

14

PRESENT

ANNEX E

Mr. Justice Dr. Nasim Hassan Shah C.J.  
Mr. Justice Fazal Ilahi Khan  
Mr. Justice Manzoor Hussain Sial

CIVIL APPEAL NO. 574 OF 1992

Mir Ahmad Khan Appellant.

Vs.

Secretary to Govt. and others. Respondents.

For the Appellant: Nemo.

For Respondents: Mr. Mumtaz Ali Mirza, DAG  
Mian Shakirullah Jan, AOR  
(absent)  
Mr. Imtiaz Muhammad Khan AOR

Date of hearing: 30.II.1993.

JUDGMENT

MANZOOR HUSSAIN SIAL:J Facts of the case are that on 6.12.1980 the appellant was appointed as Junior Clerk in Afghan Refugees Organisation. He was promoted on 29.12.1985, as Assistant. On 27.3.1991, vide office order, services of various officials of different categories were terminated with effect from 31.3.1991, but the appellant's name was not included in that list. Nevertheless on 7.4.1991, another office order was issued wherein his name was included in the list of the officials whose services were terminated with effect from 31.3.1991.

ATTESTED

ATTESTED  
MANZOOR HUSSAIN SIAL

precedent  
S/S

~~15~~  
15

2. The appellant represented against the order of his termination from service, before the departmental authority and after receiving no reply filed Appeal No.270(P)/1991, which was dismissed vide impugned judgment dated 13.II.1991, passed by the Federal Service Tribunal.

3. Aggrieved by the decision the appellant, filed petition for leave to appeal which was granted by this court on 23.8.1992 to consider the question whether the appellant was entitled to any pensionary benefits under Regulation 37I-A of the Civil Service Regulations.

4. The learned Deputy Attorney General for Pakistan, raised a preliminary objection, to the effect, that, the appellant and other employees of the Afghan Refugees Organization were not government servants as their salaries were not paid from the annual Federal Budget, elaborating his submission he pointed out that even if their salaries and allowances are reflected in the annual Budget of the Government of Pakistan, the net expenditure incurred, is later on reimbursed by the United Nations High Commissioner for Refugees.

Precisely the same objection was raised in Civil Appeal No. 22(P) of 1988 Commissioner, Afghan Refugees NWFP and others vs. Fazli Hakim, and this court.

ATTESTED

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vide judgment dated 3.12.1990 held as under:-

"Another ground which was raised during the course of the hearing of the appeal but not noted in the leave granting order was that the respondent could not be treated as a Federal Government employee and had to be dealt with under the Provincial Law being for all purposes governed by the Civil Servants Act of the Province of NWFP. We find at page 21 of the Service Tribunal's record a determination of the Government of Pakistan, States and Frontier Regions Division dated 21st March, 1982, wherein it was made clear that the posts were civil in nature, were connected with the affairs of the Federation and were to be paid from the Federal Budget and the employees were to be "Federal Government employees, and government by rules applicable to the Federal Government employees".

The Federal Service Tribunal itself in Appeal No.123(R) of 1991 M/a Muhammed Iqbal and Mr. Hinollah

held....

**ATTESTED**

held, the employees of the Afghan Refugees Organization as Civil Servants within the meaning of Civil Servants Act, 1973.

17

In this view of the matter the appellant and other employees of the Afghan Refugees, Organization are government servants and they are entitled to pensionary benefits of their cases are governed covered by Regulation No. 37I-A of the Civil Serviced Regulation which reads:-

37I-A. Notwithstanding anything contained in Articles 355(b), (36I), 368 and 37I of these Regulations, temporary and officiating service, in the case of Government Servants who retired on or after the 1st January, 1949, or who joined service thereafter, shall count for pension according to the following rules:-

- (i) Government servants borne on temporary establishments who have rendered more than 5 years continuous temporary service shall count such service for the purpose of pension or gratuity excluding broken period of temporary service, if any, rendered previously and
- (ii) temporary and officiating service followed by confirmation which does not qualify for pension under the rules in this section shall also count for pension or gratuity subject to the exclusion of the broken periods of temporary or officiating service, if any.

ATTESTED

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NOTE: The pension of Government servants who have already retired after the 1st January, 1949, shall be revised under this Article but the increased pension shall have effect from the 17th August, 1952, or from the date as determined under Article 930, whichever is later.

" Government orders see serial Nos. 2, 8 and 10 Chapter II and S Nos. I, of Chapter III in Section VI".

Learned counsel for the appellant also referred to parawise comments and summary of the case, filed by the Government, in the Appeal No. 318(P) of 1992, Roohullah Jan vs. Federal of Pakistan, available on pages 28/29 of the file wherein it was conceded by the Government that the claim of the appellant in that case for pensionary benefits under Rules 37I-A was justified.

Admittedly the appellant put in more than ten years temporary service before his services were terminated he was therefore, entitled to pensionary benefits under 37I-A(i) of Civil Service Regulation. It appears that this provision of the Civil Service Regulation was not cited before the Tribunal, otherwise the observation to the contrary, could not have been made in the impugned judgment.

Resultantly, the appellant and Organization, other employees of the Afghan Refugees Organization, being...

  
**ATTESTED**

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being Government Civil Servants, are held entitled to pensionary benefits if their cases are covered by Regulation No.37I-A of Civil Service Regulation. We allow this appeal set aside the impugned judgment of the Federal Service Tribunal with no order as to costs.

Sd/- Nasim Hassan Shah C.J.  
Sd/- Fazal Ilahi Khan J.  
Sd/- Manzoor Hussain Siel J.

ISLAMABAD  
February 7, 1994.

NOT APPROVED FOR REPORTING.

ATTESTED

Annex 19

IN THE SUPREME COURT  
(Appellate Jurisdiction)

20

Present:

Mr. Justice Shafiqur Rahman,  
Mr. Justice B. Hanif Ali Shah,  
Mr. Justice Ali Hossain Qazi (J. Bash.)

CIVIL APPEAL NO. 22-P OF 1988.

(From the judgment of Federal Service  
Tribunal Islamabad dated 2.6.1985  
passed in Appeal No. 302(P)/84)

ATTESTED

Commissioner, Afghan  
Refugees, NWFP and  
others.

Appellants

Versus

Fazli Hakim.

Respondent

For the Appellants : Mr. M. A. Qayum Mazhar, ASC

For the Respondent : Mian Shahirullah Jan, AOR

Date of hearing : 3.12.1990.

JUDGMENT:

SHAFIUR RAHMAN, J. - Leave to appeal was granted under Article 212(3) of the Constitution to examine, inter alia, whether the respondent who was appointed as an Accountant under the Commissioner, Afghan Refugees, NWFP, was a civil servant within the meaning of NWFP Civil Servants Act.

2. By an Order dated 18th of May, 1981, the Commissioner, Afghan Refugees passed the following Order of appointment of respondent:-

"In exercise of the powers of the appointing authority in respect of posts in Grade-16, in Afghan Refugees Organization, delegated to Commissioner, Afghan Refugees, NWFP vide Government of NWFP Home and Tribal Affairs Department, Peshawar's orders No. 5/4-DEPT/HD dated 2.8.81, the promotions/

precedent  
26/12



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IN THE SUPREME COURT  
(Appellate Jurisdiction)

20

Present:  
Mr. Justice Shafiur Rehman  
Mr. Justice S. Usman Ali Shah  
Mr. Justice Ali Hussain Qazilbash

CIVIL APPEAL NO.22-P OF 1988.

(From the Judgment of Federal Service  
Tribunal Islamabad dated 2.6.1985  
Passed in Appeal No.302(P)/84)

Commissioner, Afghan  
Refugees, NWFP and  
others.

.....Appellant

Versus

Fazli Hakim

.... Respondent

For the Appellants : Mr. M.A. Qayum Mazhar, ASC

For the Respondent : Mian Shahirullah Jan, AOR

Date of hearing : 3.12.1990.

JUDGMENT

SHAFIUR RAHMAN, J:- Leave to appeal was granted under Article 212(3) of the Constitution to examine, inter alia, whether the respondent who was appointed as an Accountant under the Commissioner, Afghan Refugees, NWFP, was a civil servant within the meaning of NWFP Civil Servants Act.

2. By an Order dated 12<sup>th</sup> of May, 1981, the Commissioner, Afghan Refugees passed the following Order of appointment of respondent:-

“In exercise of the powers of the appointing authority in respect of posts in Grade-16, in Afghan Refugees Organization, delegated to Commissioner, Afghan Refugees, NWFP vide Government of NWFP Home and Tribal Affairs Department, Peshawar’s orders No.5/1-SCAR/HD/\_\_\_\_ dated 7.4.1981, the promotions/

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appointments of the following Ex-Camp Commandants/ Assistants/Accountants working in Grade-11, in A.R.Organisation, are hereby ordered as Refugees Village Administrators in Grade-16, purely on temporary basis and on the existing terms and conditions laid down by the Government against the vacant posts of R.V.A. in Grade-16, at the District/Agency noted against each, with effect from the date of taking over charge:-....."

3.-- The terms and conditions of appointment communicated and relevant to the respondent were as follows:-

- I. The officers re-employed in Grade-16 designated as Refugee village Administrator would be responsible for about 5000 refugees.
- II. Officers temporarily appointed will be admissible the grade pay and allowances as admissible under the rules to provincial Govt:servants at the station of posting of the officer concerned.
- III. Such employees who are by nature of their duties required to physically reside in tented accommodation would be provided facilities of free ration and essential camp equipment.
- IV. The temporary appointment will be initially for a period of two years subject to the continuance of the Organisation. The services of the temporarily appointed officers will however be terminable on one month's pay in lieu of the notice."

4. The services of the respondent were terminated by an order dated 19.7.1984 which reads as here-under:-

"After going through the enquiry report conducted by the Distt:Administrator, A.R.Mardan in respect of Mr.Fazal Hakeem, R.V.A., it has been established that he was involved in serious irregularities tantamounting to malpractices & misappropriation while in service as Refugee Village Admin:incharge of the Afghan Refugees camp in Peshawar District.

ATTESTED

In view of the aforesaid facts, the Commissioner A.R. MWP, has been pleased to order for termination of his service w.o. from 15.2.1984 (A.R.) with one month's notice commencing from 16.1.84 (P.R.) being undesirable.

Note:- Handing/taking over charge of the post should be arranged by the Distt; Admn: A.R. Mardan forthwith."

This was challenged by the respondent before the Service Tribunal, and he succeeded. The reason given for allowing his appeal was as hereunder:-

"The order of termination attaches stigma on him which shows that he has been punished, and awarded penalty of removal from service. Such a penalty cannot be awarded without proceeding against under the Government Servants (Efficiency and Discipline) Rules. In the present case this having not been done, the order of termination of service of the appellant is illegal ab-initio."

5. Mr. M.A. Qyum Mazhar, Advocate, the learned counsel for the appellants contended that the Commissioner Afghan Refugees had the power to employ persons on contract and the employment of the respondent was on contract and for the purposes of the Civil Servants Act, contract employees are not civil servants. In the alternative, it was contended that his employment was temporary and terminable any time without assigning any reason. On that score too, the order terminating his services could be defended. Additionally, it was contended that all such employees had to be treated as Provincial Government employees and the Federal Service Tribunal had no jurisdiction over them.

ATTESTED

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6. It is true that the directions of the Federal Government were that the direct appointments in the organisation of Afghan Refugees should be made on contract basis. Nevertheless, as would appear from the appointment Order reproduced above, the competent authority made the appointment on temporary basis. Had the respondent been a contract employee, Civil Servants Act would not have been applicable to him on the strength of definition of 'civil servant' contained in section 2(1)(b)(ii) of the Civil Servants Act. However, a temporary employee does fall within the definition of a civil servant for the termination of whose service, provision has been made in section 11(3) of the Civil Servants Act. The respondent was a temporary employee as appears from his appointment Order and his services could be terminated by notice or pay in lieu thereof.

7. It is not an Order of termination simpliciter which has been passed. It appears that some sort of enquiry was undertaken, the respondent was found to have committed dereliction of duty and it was by way of punishment that such an Order was passed. We went through the record in order to ascertain the nature and the scope of the enquiry but the deeper we went into the matter, the more convinced we became that it

based on

**ATTESTED**

23

6. It is true that the directions of the Federal Government were that the direct appointments in the organization of Afghan Refugees should be made on contract basis. Nevertheless, as would appear from the appointment order reproduced above, the competent authority made the appointment on temporary basis. Had the respondent been a contract employee, Civil Servants Act would not have been applicable to him on the strength of definition of 'civil servant' contained in section 2(1)(b)(ii) of the Civil Servants Act. However, a temporary employee does fall within the definition of a civil servant for the termination of whose service, provision has been made in section 11(3) of the Civil Servants Act. The respondent was a temporary employee as appears from his appointment order and his services could be terminated by notice or pay in lieu thereof.

7. It is not an Order of termination simpliciter which has been passed. It appears that some sort of enquiry was undertaken, the respondent was found to have committed dereliction of duty and it was by way of punishment that such an order was passed. We went through the record in order to ascertain the nature and the scope of the enquiry but the deeper we went into the matter, the more convinced we became that it \_\_\_\_\_ based on \_\_\_\_\_ and

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participate in the enquiry or to produce defence in respect of the allegations made or found established. An Order of termination simpliciter would have been unexceptionable the respondent being a temporary employee. The stigma, the charges and the penal nature of the Order make it illegal, beyond competence of the authority and in violation of the express provision of law. We had already rendered a view in other cases of similar nature coming up before us for example, Muhammad Siddiq Javid Chaudhry versus the Government of West Pakistan (PLD 1974 S.C. 395), Pakistan (Punjab Province) versus Raz Ali Khan (1982 S.C.M.R. 770), Government of NWFP through Inspector General, NWFP Police versus Mst. Tasleem (Civil appeal No.33/1989 - decided on 2.7.1990) and Secretary to Government of N.W.F.P. Agriculture & Forest Department, NWFP, Peshawar & 3 others versus Hamroz Khan (Civil Appeal No.113/1989 decided on 3.12.1990), upholding the striking down of such Orders. The competent authority itself has to decide whether it proposes to pass a penal order in which case it should hold the enquiry or pass an Order simply of termination of service in which case no stigma, no charge and no allegation need be mentioned in the Order to observe the law laid down by this Court in Abdul Karim versus the West Pakistan Province (PLD 1956 S.C. 398).

ATTESTED

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Another ground which was raised during the course of the hearing of the appeal but not noted in the leave granting order was that the respondent could not be treated as a Federal Government employee and had to be dealt with under the Provincial Law being for all purposes governed by the Civil Servants Act of the Province of NWFP. We find at page 21 of the Service Tribunal's record a determination of the Government of Pakistan, States and Frontier Regions Division dated 21st March, 1982, wherein it was made clear that the posts were civil in nature, were connected with the affairs of the Federation and were to be paid from the Federal Budget and the employees were to be "Federal Government employees, and governed by-rules applicable to the Federal Government employees". In view of such a determination by the employer himself, this argument cannot be successfully advanced for avoiding the jurisdiction of the Federal Service Tribunal.

9. No merit is found in this appeal and the same is dismissed with no order as to costs.

2/- *Shahin Roshan*  
 2/- *Ali Hassan*  
 2/- *Ali Hassan*

**ATTESTED**

Dated, Peshawar,  
 December 3, 1990.

Secretary  
 Government of Pakistan  
 Peshawar

AN: S

"G" P31

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Judgement Sheet

IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

Misc. Pet. No. 47/96  
In Appeal No. 43(P)/95 of 1995

Date of Institution: 15.5.1995

JUDGEMENT

Date of hearing: 25.7.1996

APPELLANT: Rawas Khan

RESPONDENT: Commissioner Afghan Refugees, NAFI Peshawar & others.

Before: Mr. Mohammad Ismail,  
Mr. Boor Mohammad Nagai,  
Mr. Aftab Ahmed,  
Mr. Roshan Ali Mangi, Members.

Present: Petitioner with Mr. Khusdil Khan,  
Advocate.  
Cyed Anif Shah, Advocate for respondent  
department.

ROSHAN ALI MANGI, MEMBER: The respondents have filed their objections before the Tribunal against the Misc. Petition No. 47/96 in Appeal No. 43(P)/95, which was heard on 25th July, 1996. During the course of hearing, the learned counsel for the respondents raised the issue, that the appellant was purely employee of UNHCR, as such did neither qualify the requirements applicable under article 371 of CBR, nor could he be brought within the scope of class of employees to be benefited by the referred judgement of the Supreme Court. As such he contended that the appellant did not qualify for his pensionary benefits. However being an employee of UNHCR Assistance Project for Afghan Refugees, he was entitled to the service compensatory benefits which had already been received by him.

ATTESTED



IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD.  
Misc. Pet. No.47/96.  
In Appeal No. 43(P)/95

Date of Institution 15.5.1995

JUDGMENT

Date of hearing 25.7.1996

APPELLANT Hawas Khan

RESPONDENT Commissioner Afghan Refugees, NWFP Peshawar & others

Before: Mr. Muhammad Ismail,  
Mr. Noor Muhammad Magsi,  
Mr. Aftab Ahmed,  
Mr. Roshan Ali Mangi, Members

Present: Petitioner with Mr. Khushdil Khan,  
Advocate  
  
Syed Asif Shah, Advocate for respondent  
department.

ROSHAN ALI MANGI, MEMBER: The respondents have filed their objections before the Tribunal against the Misc. Petition No.47/96 in Appeal No.43(P)/95, which was heard on 25<sup>th</sup> July, 1996. During the course of hearing, the learned counsel for the respondent raised the issue, that the appellant was purely employee of UNHCR, as such did neither qualify the requirement applicable under Article 371 of the CSR, nor could be brought within the scope of class of employee to be treated by the referred judgment of the Supreme Court. As such he contented that the appellant did not qualify for the pensionary benefits. However being an employee of UNHCR Assistant Project for Afghan Refugees he was entitled to the service compensatory benefits which had already been received by him.

2. It was submitted that "in the projects, there are self Afghan Refugees, employed for Education, Health and such purpose of their own children. In case they were treated civil servants and allowed pensionary benefits, it would amount to allow them citizenship with ever lasting benefits."

3. It may be recalled that the main appeal (i.e. No. 43(P)/95) was heard on 1.10.1995 and judgement passed on 23.10.1995. The appeal was dismissed. But it was clarified subsequently :

"However, the appellant would be entitled to pensionary benefits as allowed by the Hon'ble Supreme Court as decided in its judgement in Civil Appeal No. 574/1992, if he has a service more than ten years at his credit."

4. Although Mr. Mohammad Asif Ali Shah, the learned standing counsel for the respondents department, appeared on the day of the regular hearing of the main appeal, nevertheless he did not raise the point, now brought out in the form of objections against the Misc. Petition No. 47/96.

5. The main appeal was heard on 11.10.1995. Mr. Khush Dil Khan, the learned counsel, appeared on behalf of the appellant. However, neither the comments were filed on behalf/ nor the learned counsel, raised objection if the appellant was not the employee of Afghan Refugees Organization, hence eligible for pension in terms of Supreme Court's judgement in Civil Appeal No. 574/1992, if he has a service more than 10 years at his credit. Now it is too late to consider such an issue, specially when the judgement has already been passed. Even then Syed Asif Ali Shah, the learned counsel for the respondents was asked to submit the documents to establish that the petitioner did not fall within the ambit of civil servants, as according to him, he was the employee of UNHCR.

6. After a very long period, the learned counsel for the respondents submitted some documents and monthly bills. The

ATTESTED

(Handwritten mark)

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(Countersigned by A.A.R.)

persual of these documents does not establish if the appellant was the employee of the said UNHCR. The monthly bills have been countersigned by the Commissioner Afghan Refugees. The appellant has received his salary. However, this again does not establish if he is not the employee of Afghan Refugees Organization.

7. In our opinion, these documents do not establish if the appellant was not the employee of the Afghan Refugees Commissionerate, as is clearly established by the petitioner's appointment letter as well as his order of retirement.

8. We therefore, stick to our judgement and direct the respondents again to implement the decision of the Tribunal already made with regard to pensionary benefits.

Islamabad:  
6/11/1996.

*[Signature]*  
MEMBER

*[Signature]*  
MEMBER

*[Signature]*  
MEMBER

*[Signature]*  
MEMBER

ATTESTED



ACCOUNTANT - GENERAL, PAKISTAN REVENUES,  
PESHAWAR

*[Handwritten initials]*

29

No. PAR(P)/ECFIC/CAR/96-97/754 Dated... 3.12.1995

To

The Commissioner,  
Afghan Refugees,  
N.W.F.P. Peshawar.

Subject:-

Grant of Pension by the honourable Federal Service Tribunal to Mr. Hawas Khan Driver of UNHCR.

Memo:-

Please refer to your No. CAR/AO/Pension/11149 dated Peshawar the 30.11.1996.

Since the honourable Federal Services Tribunal has decided the case in favour of the Driver concerned and allowed him necessary pensionary benefits. It is therefore requested his pension documents along with service Book may be prepared at the earliest and submit the same to this office in order to finalize his case without further delay.

*[Handwritten signature]*

Accounts Officer (Pension),  
AGPR, Sub Office, Peshawar.

*[Handwritten signature]*  
9/12/96

ATTESTED

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ANNEX F

PENSION CONTRIBUTION OF STAFF OF  
PLANNING CELL HEALTH DEPARTMENT.

<u>S.NO.</u>	<u>NAME &amp; DESIGNATION</u>	<u>PERIOD</u>	<u>RATE</u>	<u>TOTAL</u>
1.	Mohammad Tariq Khan Planning Officer (BPS-17)	26.5.92 to 31.5.94	2870-215-5450 268=24x1386.52 =	33276/-
		1.6.94 to 31.3.96	3880-290-7360 22 x 1873.14 =	41209/-
		TOTAL:		74485/-
2.	Sher Gul Khan Planning Officer (BPS17)	1.6.92 to 31.5.94	2870-215-5450 268 =24 x1386.52 =	33276/-
		1.6.94 to 31.3.96	3880-290-7360 22 x 1873.14 =	41209/-
		TOTAL:		74485/-

*Proceeded  
Same content*

ATTESTED

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PENSION CONTRIBUTION OF STAFF OF  
PLANNING CELL HEALTH DEPARTMENT

31

<u>NO.</u>	<u>NAME &amp; DESIGNATION</u>	<u>PERIOD</u>	<u>RATE</u>	<u>TOTAL</u>
1	Abrar Ahmad Steno-typist (BPS-12)	14.11.89 to 31.5.91	970-58-2010 496.62 x 281.42 =	2974.72
		1.6.91 to 31.5.94	1355-96-2790 524.95 =	18898.20
		1.6.94 to 31.3.96	1830-130-3780 934.91 =	20568.02
		<b>TOTAL:</b>		<b>42727.36</b>
2	Karim Jan Steno-typist (BPS-12)	5.8.92 to 31.5.94	1355-96-2790=691.59x21 602.35 =	14523.54
		1.6.94 to 31.3.96	1830-130-3780=934.90x22 =	20567.94
		<b>TOTAL:</b>		<b>35693.83</b>
3	Sardaraz Khan Driver (BPS-4)	8.1.91 to 31.5.91	675-22-1115 298.30 x 4 = 1193.21x230 =	1424.15
		1.6.91 to 31.5.94	1005-43-1650 442.45x36 =	15928.40
		1.6.94 to 31.3.96	1400-66-2390 631.60x22 =	13895.27
		<b>TOTAL:</b>		<b>31247.82</b>
4	Wahid Gul Chowkidar (BPS-1)	6.11.90 to 31.5.91	600-13-860 243.30 x6 =	1459.95
		1.6.91 to 31.5.94	920-26-1310 371.62 x 36 =	13378.66
		1.6.94 to 31.3.96	1245-35-1770 502.44 x 22 =	11053.89
		<b>TOTAL:</b>		<b>26095.15</b>

**ATTESTED**



PENSION CONTRIBUTION OF STAFF OF  
PLANNING CELL HEALTH DEPARTMENT.

<u>S.NO</u>	<u>NAME &amp; DESIGNATION</u>	<u>PERIOD</u>	<u>RATE</u>	<u>TOTAL</u>
5	Amir Bahader Naib Qasid (BPS-1)	26.11.90 to 31.5.91	600-13-860 243.31	40.55
		1.6.94 to 31.5.94	920-26-1310 370.63 ==	1459.86
		1.6.94 to 31.3.96	1245-35-1770 502.45 =	1459.86
		TOTAL:		
				1053.90
				15932.99
6	Noor Hamid Naib Qasid (BPS-1)	7.11.90 to 31.5.91	600-13-860 243.30 x 6 =	1459.85
		1.6.91 to 31.5.94	920-26-1310 371.63 x 36 =	194.64
		1.6.94 to 31.3.96	1245-35-1770 502.45 x 22 =	1654.49
		TOTAL:		
				11053.89
				26087.04

**ATTESTED**

33

<u>S.NO.</u>	<u>NAME.</u>	<u>PERIOD.</u>	<u>AMOUNT.</u>
1.	MOHAMMAD TARIO KHAN planning officer.	25.5.92 to 31.3.1996.	74753/-
2.	Sher Gul Planning Officer	1.6.92 to 31.3.96	74485/-
3.	IBRAR AHMAD Steno types	14.4.89 to 31.3.96	42727/36
4.	KARIM DAN -do-	5.8.92 to 31.3.96	35693/83
5.	SARDARAZ KHAN driver	8.1.91 to 31.3.96	31247/82
6.	AMIR BAHADAR N/O	26.11.90 31.3.96	15932/99
7.	NOOR HAMID -do-	7.11.90 to	26087/04
8.	WAHID GUL Chow:	6.11.90 to 31.3.96	26095/15
TOTAL :-			327022/19

ATTESTED

*[Signature]*  
Project Director  
Child Health Project  
NWFP  
11/3/96



ORIGINAL  
34

OS:PD-NYF-12 S RS - 1,000 P 0110 - 315 (12)

STATE BANK OF PAKISTAN  
RECEIVED IN CASH  
327022

portion to be transmitted by the Bank Agent to the Treasury Office  
in support of the credit in his daily account)

THE MANAGER, STATE BANK OF PAKISTAN

*Signature of Manager*

Date: 31-3-86

DEPUTY TREASURER

Received from the bearer the sum of Rs. 3,270,221/9

Three Lac Twenty Seven Thousand Two Hundred and Twenty Two/100

to be credited to Government account under the head 12124/1

on account of Pension Contribution upto 31-3-86

from the date of appointment to

*Signature and full official designation of the officer ordering the money to be paid in*

ATTACHED

Before the Director General Health KPK Peshawar

35

ANNEX 9

Fazli Wahid S/o Abdul Noor, Junior Clinical Technical  
(Pharmacy) C.D Khan Kotey Mardan R/o village Ghari  
Kapura Mardan. ....Appellant

**v/s**

1. Distt. Health Officer Mardan
2. Division Director health Mardan
3. Commissioner Afghan Refugees KPK, Peshawar

.....Respondent

**Appeal / Representation for condonation of  
break in service of appellant w.e.f 01/01/1995 to  
22/05/1995 and previous service of appellant  
already rendered in Afghan Refugees KPK  
Peshawar w.e.f 11/05/1982 to 31/12/1994 be  
counted for pay and pension with all back  
benefit.**

Respected Sir,

Appellant Humbly submits as under

**ATTESTED**

1. That appellant is post as junior Clinical Technician  
(Pharmacy) C.D Khan Kotey Mardan.
2. That appellant was appointed as compounder in  
Afghan Refugees Health project KPK, Peshawar  
vide order No.3131-34 dated 11/05/1982. (Copy of  
appointment order is attached as Annex: "A").
3. That due to winding up of Afghan Refugees  
service, service of the appellant in Afghan  
Refugees has retrenched w.e.f 31/12/1994 vide  
order No.1178 dated 31/12/1994. (Copy of the

C1

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4. That appellant was appointed as Dispenser ( BPS-6) in the office of Health department vide order 5828-31 dated 23/05/1995. (Copy of order is attached as Annex: "C").
5. That appellant was transferred from D.T.O Mardan to C.D Khan Kotey Mardan vide order dated 03/06/2008. (Copy of order is attached as Annex: "D").
6. That appellant is entitled for condonation of break in service w.e.f 01/01/1995 to 22/05/1995 and also entitled for pensionary benefit of service of appellant already rendered in Afghan refugees project w.e.f 11/05/1982 to 31/12/1994 on the following grounds:-

**GROUNDS:**

- A. That appellant has served in Afghan Refugees project w.e.f 11/05/1982 to 31/12/1994 and he is entitled for pensionary benefit of said service. (Copy of service certification is attached as Annex: "E").
- B. That similarly placed official namely Amir Muhammad in case titled as Amir Mohd Vs Commissioner Afghan Refugees and Israr Vs Commissioner Afghan Refugees " was granted pensioner benefits, so appellant is also entitled for the same benefit.
- C. That as per judgment of Apex Supreme Court of Pakistan, if an official is resigned the Government service and appointed

**ATTESTED**

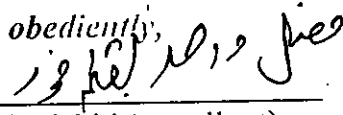
D. That other similarly placed officials were granted the same benefit in appeal titled as "Arshad versus D.L.R, Shafiq ur Rehman and Muhamamd Riaz versus Board of Revenue Peshawar" and as per reported judgments of Apex Supreme Court of Pakistan , SCMR 1996 page 1185 and 2003 SCMR page 1074, appellant is also entitled for the same benefits./relief.

37

*It is, therefore, humbly prayed that on acceptance of this amended appeal the break in service of appellant w.e.f 01/01/1995 to 22/05/1995 may please e condoned and previous service of appellant already rendered in Afghan Refugees project may please be counted for pensionary benefit. Any other relief deemed fit may also be graciously warded.*

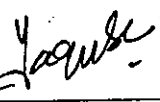
*Dated 12/06/2015*

Your's obediently,



Fazli Wahid (appellant)

Through



Yaqoob Khan advocate High courts at  
Distt. courts Mardan.

*Dated 15/6/2015*

**ATTESTED**



**DIRECTORATE GENERAL HEALTH SERVICES  
KHYBER PAKHTUNKHWA PESHAWAR**

No 10257 /AE-VI

Dated 08/10/2015

To

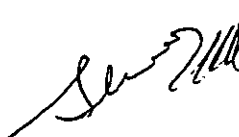
Mr. Fazal Wahid S/O Abdul Noor,  
Jr. Clinical Technician (Pharmacy),  
Civil Dispensary Khan Kotey Hoti,  
District Mardan.

Subject: - **APPEAL.**  
Memo,

38

ANNEX H

I am directed to refer to your appeal dated 15.06.2015, on the subject noted above and state that your subject appeal is regretted.

  
ASSISTANT DIRECTOR (P-III)  
DIRECTORATE GENERAL HEALTH  
SERVICES KPK, PESHAWAR.

08/10

**ATTESTED**

  
**ATTESTED**

H

BEFORE THE KHYBERPAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No 38/2011

Date of institution - 07.01.2011  
Date of decision - 01.08.2011



39

Arshad Alam. Additional Government Pleader, Law Department, Khyber Pakhtunkhwa, Peshawar. Presently Assistant Director (Legal), Anti Narcotics Force, Peshawar (on deputation).....(Appellant)

ARSHAD ALAM

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Law, Parliamentary Affairs & Human Rights Department Civil Secretariat, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
3. Secretary, Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.....(Respondent)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 FOR ISSUING APPROPRIATE DIRECTIONS TO THE RESPONDENTS TO COUNT THE SERVICE OF THE APPELLANT RENDERED IN PAKISTAN AIR FORCE TOWARDS THE PRESENT SERVICE AT LAW DEPARTMENT FOR THE PURPOSES OF PAY, PENSION/C.P FUND, GRATUITY AND OTHER ATTACHED SERVICE BENEFITS FOR WHICH APPELLANT FILED DEPARTMENTAL TO THE COMPETENT AUTHORITY ON 14.05.2010 BUT THE SAME WAS REJECTED AND COMMUNICATED TO APPELLANT VIDE LETTER DATED 08.12.2010.

Mr. Khalid Rehman Advocate..... For appellant.  
Mr. Sherafgan Khattak, A.A.G..... For respondents.

SYED MANZOOR ALI SHAH.....MEMBER.  
MR. KHALID HUSSAIN.....MEMBER.

ATTESTED

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER:- This appeal has been filed by

the appellant for issuing directions to the respondents to count his service rendered in

Pakistan Air Force towards the present service at Law Department for the purposes of

pay, pension, C.P Fund, Gratuity and other attached service benefits.

Brief facts of the case are that the appellant joined the service of Law

Department as Additional Government Pleader on adhoc basis on 1.12.2008.

ATTESTED

EX AMEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

H

*[Handwritten scribble]*

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Subsequently he was regularly appointed as such on 30.5.2009. He has served in Pakistan Air Force as Commissioned Officer (BPS-17) w.e.f. 28.7.2003 and retired on 30.9.2008. Under the law, the appellant is entitled for counting of his service performed in the Pakistan Air Force towards the present service in Law Department for service benefits. Therefore, the appellant preferred a departmental appeal but the same was rejected vide letter dated 8.12.2010. Hence, the instant appeal.

3. Arguments heard and file perused.

4. The learned counsel for the appellant argued that the respondents have not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused to count the previous service of appellant rendered in the Pakistan Air Force for the purpose of service benefits towards the present service in the Law Department, which is unjust, unfair and hence not sustainable in the eye of Law. Before joining the Law Department, the Pakistan Air Force had issued proper NOC to the appellant which was received by the Law Department, therefore, legally Respondents were required to count the Air Force service towards the service in Law Department but the Respondents have unlawfully refused to extend the benefits of the PAF service which has adversely affected the service career of appellant. Under Article 356 (a) of Civil Service Regulations (C.S.R), service so rendered by a person is to be considered for the purposes of Pay, Pension/C.P. Fund and Gratuity after joining the new service of the Government but the respondents have unlawfully refused the same, which cannot be sustained under the law. In support of his arguments he relied on 2008-PLC- (C.S) 482.

5. The A.A.G argued that the appellant was appointed on as-hoc basis vide order dated 01-12-2008 and latter on was recommended by Khyber Pakhtunkhwa Public Service Commission vide Notification dated 30-05-2009. The appellant retired from Air Force and after retirement appointed on adhoc/contract basis as Addl. Government Pleader on 01-12-2008. The law provides continuity of service for reckoning the previous service for the purpose of financial benefits. Since appointment of the appellant lacks continuity, therefore he is not entitled to take advantage of his previous service.

ATTESTED  
EX-MINISTER  
Khyber Pakhtunkhwa  
Public Service Commission

ATTESTED

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6. Keeping in view the facts and circumstances of the case the Tribunal while agreeing with the arguments put forth by the learned counsel for the appellant, accepts the appeal, sets aside the impugned order and directs the respondent department to count his PAF service with present service from 28.7.2003 for the purpose of pay, pension and other attached retirement benefits in light of Civil Service Regulation (C.S.R) No. 420 (h), 422 and 365 (a). The appellant will remit the amount of gratuity to the PAF, if received. The two months will be considered as leave without pay. The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.  
01.08.2011.

*[Signature]*  
(KHALID HUSSAIN)  
MEMBER.

*[Signature]*  
(SYED MANZOOR ALI SHAH)  
MEMBER.

Certified to be true copy  
*[Signature]*  
Khy. Service Tribunal,  
Peshawar

**ATTESTED**

*[Signature]*  
**ATTESTED**



42

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*(Handwritten mark)*

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

*ANNEX J*

Present

Mr. Justice Nasir-ul-Mulk  
Mr. Justice Tariq Parvez

*(Handwritten signature)*

**CIVIL PETITION NO.552-P OF 2011**

(On appeal from the judgment/order dated  
01.08.2011 passed by KPK Service Tribunal,  
Peshawar in Appeal No. 38/2011)

Secretary, Law Department,  
Govt. of KPK Peshawar and others ... .. Petitioners  
Arshad Alam ... .. Respondent.

versus

For the petitioners ... .. Mr. Naveed Akhtar, Addl. AG.  
Respondent ... .. In-person.  
Date of hearing ... .. 03.01.2013.

JUDGMENT

TARIQ PARVEZ, J. Facts of the case are that respondent served the Pakistan Air Force as Commissioned Officer w.e.f 28.07.2003 and retired on 30.09.2008; thereafter he joined the service in Law Department as Additional Government Pleader on adhoc basis on 01.12.2008 and subsequently was regularly appointed as such on 30.05.2009. He preferred departmental appeal for counting of his service, rendered by him in Pakistan Air Force, which was rejected on 08.12.2010. He then went in appeal before the Service Tribunal, which has been allowed by means of the impugned judgment. Hence this petition for leave to appeal by the Secretary, Law Department, Govt. of KPK.

**ATTESTED**

*(Handwritten signature)*

Deputy Registrar,  
Supreme Court of Pakistan,  
Peshawar.

**ATTESTED**

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2. Learned Additional Advocate General has appeared and argued that the respondent was initially appointed on adhoc basis and later on was recommended by the Public Service Commission for regular appointment on 30.05.2009. According to him since after retirement the respondent was appointed on adhoc/contractual basis and was later on appointed on regular basis, therefore, he lacks continuity in his service as such is not entitled to counting of service rendered by him in Pakistan Air Force for the purposes of Pay, Pension and other attached service benefits. He has further contended that the impugned judgment suffers from legal and factual infirmities and requires interference by this Court.

3. The respondent has appeared in-person and supported the impugned judgment.

3. We have heard the learned Additional Advocate General as well as the respondent and have also gone through the available record. Article 365(a) of the Civil Service Regulations clearly provides that the service rendered by a person as commissioned officers, non-commissioned officers and men of the Pakistan Army be allowed to count, when followed by service qualifying for pension under civil rules. Admittedly the respondent had served the Pakistan Air Force as Commissioned Officer before joining the petitioner-department and he had been issued proper NOC by the Pakistan Air Force for joining new service, therefore, keeping in view the Article 365(a) *ibid* the petitioner-department had unlawfully refused to extend

ATTESTED  
*[Signature]*  
Deputy Registrar,  
Court of Pakistan

ATTESTED

CP.552-P/2011.

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21

the benefit of his previous service. As such the Service Tribunal was justified in allowing the appeal of the respondent.

In view of above, we find no merit in this petition, as

such the same is dismissed. Leave declined.

Sd/- Nasir-ul-Mulk, J  
Sd/- Tahir Hussain, J

Certified to be true copy

*[Signature]*  
09.01.2013  
Deputy Registrar,  
Supreme Court of Pakistan,  
Islamabad

Islamabad the,

03.01.2013

Ishfaq Hussain  
*[Signature]*

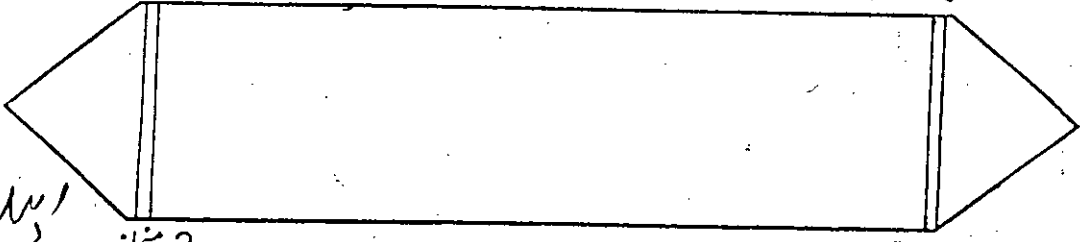
NOT APPROVED FOR REPORTING.

07/1/13

ATTESTED

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# بعدالت



اسد احمد

2 منجانب سے  
بنام نور محمد

مضمواد

موزخه  
مقدمہ  
دعویٰ  
جرم

## باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکھائی گئی متعلقہ  
آن مقام کے اقرار کیا جاتا ہے۔ کیلئے اسد احمد

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
دکیل صاحب کو راضی نامہ کرنے و تقریر ثالثہ فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ  
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

ماہ نومبر 2015

3

المقوم

کے لئے منظور ہے۔  
Abstract  
Accepted

بمقام

BEFORE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWR

APPEAL NO. 1288/2015

Mr. Fazle Wahid

Appellant

VERSUS

Secretary to Government of Khyber Pakhtunkhwa,

Department Health, & Others.

Respondent

PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2 & 3.

Preliminary Objections:-

1. That the appellant is incompetent and not maintainable in its present forum.
2. That the appellant has neither cause of action nor locus standi.
3. That the appellant has filed the appeal in im-proper forum and may be dismissed.
4. That the appellant has no cause of action.
5. That the appellant has not come to the court with clean hands.
6. That the appeal is time barred.

FACTS:-

1. Relates to respondent No. 4.
2. He has been appointed against the other category of post i.e. Medical Technician on 23.05.1995.
3. Relates to respondent No. 4.
4. Relates to respondent No. 4.
5. That appeal of counting of his previous service has been regretted in light of Govt. of Khyber Pakhtunkhwa Health Department Peshawar instructions conveyed vide letter No. SOH-III/10-4/05(Fazl-e-Wahid) dated 19.04.2007 (copy attached) *(Annex A)*

GROUND:-

- A. Incorrect. As in para-05 above.
- B. As replied in above paras.
- C. Relates to respondent No. 04.
- D. *Incorrect. In light of circular letter dated 04-6-2011 (Annex B), appellant is not entitled to pay Protection Pensionary benefits.*
- E. That the respondents seek permission to raise objectionable grounds at the time of arguments.

It is requested that the appeal may be dismissed with cost.

Secretary to Govt. of Khyber Pakhtunkhwa,  
Health Department Respondent No. 01

Secretary to Govt. of Khyber Pakhtunkhwa,  
Finance Department Respondent No. 02

Director General Health Services

Khyber Pakhtunkhwa Respondent No. 03

12/5

12/16

SOH-II

2476  
21-4-07  
20/4  
24/4  
Annex A

GOVERNMENT OF NWFP  
HEALTH DEPARTMENT

No. SOH-III/10-4/05 (Fazl-e-Wahid)  
Dated 19<sup>th</sup> April, 2007

To

The Director General Health Services,  
NWFP, Peshawar.

Subject:- COUNTING OF SERVICE RENDERED IN AFGHAN  
REFUGEES ORGANIZATION TOWARDS  
SENIORITY/PENSION WITH BACK BENEFITS.

I am directed to refer to your letter No. 27504/E.V, dated 18.10.2007, on the subject and to convey inability of this Department to agree with the request of the applicant. The service of the official may be counted from the date he joined the Government Department for all purposes.

660  
21/4/07  
P-24A  
SECTION OFFICER-III

Endst. No. & Date Even.

Copy to the Section Officer (SR-II), Finance Department, with reference to their letter No. KC/FD(SOSR.II)4-201/2000, dated 26.03.2007.

SECTION OFFICER-III

DIRECTORATE GENERAL HEALTH SERVICES, NWFP, PESHAWAR

No. 11090 /E-V, Dated Peshawar the 28/04/2007-

Copy of the above is forwarded to the EDO(H) Mardan for information w/r to his letter 15876/dated 28.9.06. He is requested to inform the Dispenser concerned accordingly.

FOR DIRECTOR GENERAL HEALTH  
SERVICES/NWFP PESHAWAR  
28/4/07

Annex B

**TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)**

NO. FD (SR-1) 12-1/2011

Dated Peshawar the: 4<sup>th</sup> June, 2011

TO:

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All District Coordination Officers in Khyber Pakhtunkhwa.
10. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
11. The Registrar, Peshawar High Court, Peshawar.
12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: **FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.**

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No.FNo.4(2)R-II/1996-235/2010, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1921(R) CS/2005 in respect of *Mr. Sajjad Rashid* and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that henceforth the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic pay scales in to-to on their appointment in government offices, provided they have applied for the post through proper channel.

Yours Faithfully,

  
(MASOOD KHAN)  
Deputy Secretary (Reg-II)

**Endst:of even No. & date.**

Copy forwarded for information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
2. Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. All District Comptrollers of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
5. Director, FMIU, Finance Department
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. P.S to Secretary Finance.
8. PA to Spl: Secretary Finance.

  
(SHAUKAT ULLAH)  
Section Officer (SR-I)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1288 /2015**

Fazli Wahid..... Appellant

Versus

The Secretary and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE  
TO REPLY FILED BY RESPONDENTS NO.1-3.**

Respectfully Sheweth,

**Preliminary Objections:**

Preliminary objections raised by answering respondents are erroneous and frivolous. The appellant is competent in its present form and shape. The appellant has got cause of action and for that matter locus standi to file the instant appeal. The matter appertains to the terms and conditions of service and therefore falls within the jurisdiction of the KP Service Tribunal. All material facts have been properly incorporated in the memo of appeal which is within time.

**Facts:**

- 1-4. Being not replied hence admitted under the law.
5. Misconceived. In the earlier round of litigation the final determination was that since the appellant had joined the provincial service, therefore, the Khyber Pakhtunkhwa Service Tribunal was the proper forum for adjudication of the issue in hand, hence the principle of resjudicata and for that matter estoppel does not arise.

**Grounds:**

- A-C. Being not replied hence admitted.



D. Incorrect. The cited circular is not applicable to the case of the appellant as the same was issued on 04.06.2011 which has no retrospective effect while the issue of regularization in the instant case is w.e.f. 1982 to 1994. Moreover, similar issues have been resolved by the Hon'ble Apex Court of the country in CP No.307 of 1998 dated 30.01.2002 (*Annex:-Rj/1*) CP No.159 of 2000 decided on 15.09.2003 (*Annex:-Rj/2*), CP No.658 of 1995 decided 26.02.1999 (*Annex:-Rj/3*). Additionally, as per the instructions of the Government in respect of Rule-2.1 (Extracts *Annex:-Rj/4*) of the Pension Rules, the interruption between two spells of services due to reduction, retrenchment is deemed to have been condoned. Moreover, the regularization of the services of the employees serving in Afghan Refugees Organization as temporary employees under the project of UNHCR came for discussion before the Hon'ble Islamabad High Court in numerous writ petitions which were disposed of on 31.12.2012 and reported in **2014 PLC (CS) 609** (*Annex:-Rj/5*) and they were declared as regular employees vide Report (*Annex:-Rj/6*).

E. Needs no reply.

It is, therefore, humbly prayed that the reply of answering Respondents No.1-3 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

**Appellant**

**Khaled Rahman**  
**Advocate, Peshawar**

Dated: 08 /08/2016

**Affidavit**

I, Fazli Wahid, Junior Clinical Technician, Civil Dispensary Guli Bagh, Mardan, do hereby affirm and declare on oath that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

**Deponent**

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Bashir Jehangiri, C.J.  
Mr. Justice Syed Deedar Hussain Shah  
Mr. Justice Khalil-ur-Rehman Randay

CIVIL APPEL NO. 307 OF 1998.

(On appeal from the judgment of  
the Federal Service Tribunal,  
Islamabad, dated 6.11.1996, passed  
in C.P.No.47/96 in Appeal  
No.43(P)/1995)

Commissioner Afghan Refugees,  
N.W.F.P. Peshawar.

Appellant.

Versus.

Haviz Khan s/o Zabai Khan  
and others.

Respondents

For the appellant: Syed Asif Shah, ASC.  
Mr. Zahoor Qureshi K.K.Jee, AOR (absent)

For respondent No.1: Mr. Khushdil Khan, ASC.

Respondents 2-3: Ex-parte.

Date of hearing: 30<sup>th</sup> January, 2000.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.- This appeal by  
leave of the Court is directed against the judgment of the  
Federal Service Tribunal, Islamabad (hereinafter referred to as  
the Tribunal) dated 6.11.1996, passed in C.P.No.47/1996 in  
Appeal No.43(P) of 1995.

ATTESTED

*[Signature]*  
Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

R5/1

3

R5/1

2. Hawas Khan respondent was in the service of Afghan Refugees Organization for about 11 years from 1983 to 1994. He was appointed in the Project directly and his emoluments were paid by the UNHCR. His services were terminated by the appellant w.e.f. 31.5.1994. The respondent challenged the termination of his services by filing appeal before the Tribunal, which was dismissed by judgment dated 23.10.1995. While dismissing the said appeal the Tribunal observed that the respondent would be entitled to pensionary benefits as allowed by this Court while deciding Civil Appeal No.574/1992, if he had a service of more than ten years at his credit.

3. Taking the advantage of the observation made by the Tribunal in its judgment dated 23.10.1995 the respondent filed a miscellaneous application before the Tribunal under Article 204 of the Constitution read with sections 3 and 4 of Contempt of Courts Act 1976 alleging therein that the department had not complied with the observations made by the Tribunal regarding pensionary benefits of the respondent. The appellant resisted the said application. The Tribunal vide impugned judgment dated 6.11.1996 directed the appellant to implement "the decision of the Tribunal already made with regard to pensionary benefits".

4. Syed Asif Shah, learned counsel for the appellant, inter alia, contended that the Tribunal has erred in ordering the grant of pensionary benefits to respondent No.1 while disposing

ATTESTED

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Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

of C.P.No.47/96 and the directions of the Tribunal in the impugned judgment are not sustainable.

5. Mr. Khushfi Khan, learned counsel for respondent No.1, supported the impugned judgment and pointed out that the observations made by the Tribunal in its judgment dated 23.10.1995 had attained finality and the appeal against the same order was not preferred before the appropriate forum.

6. We have heard the arguments of the learned counsel for the parties and carefully examined the record. It would be pertinent to refer to the appointment order of respondent No.1 (available at page 29 of the paper book) which reads as follows:-

"Mr. Hawas Khan s/o Zabta Khan residence of Bada Ber is hereby appointed as Driver of Heavy Vehicle w.e.f. 20 Oct, 1983 (AN) against a vacant post."

Thereafter, the respondent's services were terminated vide order dated 12.5.1994 (available at page 31 of the paper book) in the following terms:-

"Due to cut in foreign Aid and office workload, the reduction in staff has become a MUST. As such your services are no longer required by the commissionerate. You are, therefore, retrenched from services w.e.f. 31.5.1994 (A.N.)."

7. Perusal of the above-mentioned orders shows that the respondent was appointed against the vacant post by the District Administrator Peshawar, and the respondent served with the organization for more than 10 years and the Tribunal while relying on the judgment of this Court passed in

ATTESTED

Supernumerary  
Magistrate  
Peshawar

307/98  
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C-1307/98.

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C.A.No.57-I/1992 allowed the pensionary benefits to the respondent. No doubt, the appeal of the respondent was dismissed on 23.10.1995, but the Tribunal allowed the pensionary benefits to the respondent keeping in view that he had service for more than 10 years at his credit, which was in consonance to the law laid down by this Court in the appeal referred to above.

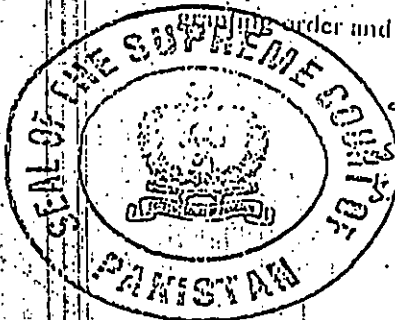
8. The impugned judgment is based on the principles laid down by this Court. Moreover, there is no misconstruction of law or jurisdictional error in the impugned judgment, which is not open to exception. Consequently, we recall the leave

order and dismiss the petition for leave to appeal.

Sd/- Muhammad Beshir Jehangiri, C.J.  
Sd/- Syed Deedar Hussain Shah, J.  
Sd/- Khalid Iqbal - Rehman Ramdani, J.

Certified to be true Copy

*[Signature]*  
Superintendent  
Supreme Court of Pakistan  
ISLAMABAD



Islamabad,  
30<sup>th</sup> January, 2002.

NOT APPROVED FOR REPORTING

12-2-2012

GR No: 3143/02  
Date of Prosecution: 25-6-02  
No. of Warrants: 12  
No. of Entries: 1200  
Regulation Fee: 5.00  
Copy Fee: 7.95  
Date of Completion: 12-6-02  
Copy: 25-6-02  
Date of delivery of Copy: 25-6-02  
Compared by: *[Signature]*  
Received by: Syed M. Saad-iy

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT  
MR. JUSTICE MUNIR A. SHEIKH  
MR. JUSTICE RANA BHAGWANDAS  
MR. JUSTICE FAQIR MUHAMMAD KHOKHAR

CIVIL APPEAL NO. 159 of 2000  
(On appeal from the judgment dated 3-4-2000  
of the Service Tribunal passed in Service  
Appeal No. 786 of 1996).

Muhammad Israr.  
Versus  
The Deputy Commissioner,  
Buner and others.

Appellant

Respondents

For the appellant:  
For the respondents:  
Date of hearing:

Mr. Jan Muhammad Khan, AOR.  
Mrs. Mussarat Hilali, Addl. A.G. NWFP.  
15-9-2003.

JUDGMENT

MUNIR A. SHEIKH, J. - This appeal by leave of the court is directed against the judgment dated 1-12-1998 of the NWFP Service Tribunal through which appeal filed by the appellant has been dismissed as barred by time.

2. The appellant after selection by the Departmental Selection Committee was appointed as Assistant (BPS-11) in the Office of the Deputy Commissioner, Buner through letter dated 22-1-1992. He reported for duty. His case for relaxation of upper age limit was recommended by the Commissioner. Thereafter, it was also recommended that his services may be regularized. The grievance of the appellant was that in spite of having reported for duty, he was not being allowed to perform the duties of the post; therefore, he approached the Service Tribunal for redressal of his grievance.

ATTESTED

Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

*Partnership is established  
for pay & pecuniary benefit*

RS/2

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RS/2

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The appeal of the appellant was dismissed through the impugned judgment dated 1-12-1998 by the NWFP Service Tribunal on the ground of limitation.

3. We have gone through the record and find that the case of the appellant has continuously been dealt with on departmental level at one stage for relaxation of upper age limit and then regularization. It is also clear from the comments filed by the respondents before the Service Tribunal that on his reporting for duty, the appellant was required to produce clearance certificate from his previous Organization where he was in service. It was stated in the comments that the appointment of the appellant automatically stood lapsed and cancelled, therefore, he was not entitled to the relief claimed by him.

4. We have gone through the appointment letter dated 22-1-1992 of the appellant and noticed that no period was fixed within which he was required to report to the department for duty. The appellant according to the comments filed before the Service Tribunal by the respondents reported for duty but the same was not being considered as valid or was objected to on technical ground. The competent authority had allowed the relaxation in upper age limit of the appellant and thereafter regularization of his service. In the circumstances, the stand of the department that his appointment stood cancelled automatically does not have the support of any law. The appellant was arbitrarily and whimsically not allowed to perform duties of the post by the department for the reason known to it.

5. The question of limitation in our view has not been properly dealt with keeping in view all the attending facts and circumstances of this case. It is a case where the appellant had been made a shuttle cock since the date of

**ATTESTED**

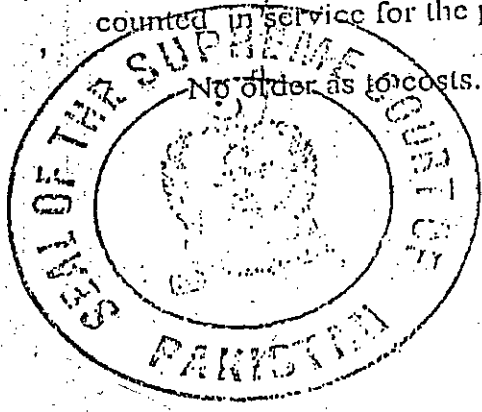
Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

LYD (9)

his appointment and was not allowed to perform the duties of the post. His matter either for relaxation of age or regularization had been pending in the department, therefore, it was not correctly decided that the appeal was barred by time. As regards objection that no departmental appeal was filed, it may be mentioned here that appellant's grievance was that he was not allowed to perform the duties of the post, therefore, in the circumstances, it can safely be stated that the conduct of the concerned authority of not permitting the appellant to perform duties of the post without an order of departmental authority could be challenged in appeal before the Service Tribunal.

6. For the foregoing reasons, this appeal is accepted, judgment dated 1-12-1998 of the Service Tribunal is set aside. The respondents are directed to give charge of the post to the appellant forthwith and allow him to perform the duties of the post. As regards claim of the appellant about back benefits, we in our discretion in the circumstances do not find it a fit case for granting him the said benefit. After joining of the post by the appellant in pursuance of this judgment, he shall be paid all his dues in future. The intervening period, however, shall be treated as leave without pay which shall be counted in service for the purpose of pensionary and other benefits.

No order as to costs.



Sdt. Munir A. Sheikh, J  
 Sdt. Rama Bhagwandas,  
 Sdt. Fazir Muhammed Khan  
 Certified to be true copy

Superintendent  
 Supreme Court of Pakistan  
 ISLAMABAD

Islamabad  
 15-9-2003.  
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THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

RJ/3  
10

labour law

PRESENT  
Mr. Justice Irshad Hasan Khan  
Mr. Justice Raja Afrasiab Khan  
Mr. Justice Muhammad Bashir Jehangir

CIVIL APPEAL NO. 658/95.  
(On appeal from the judgment/order of the  
Peshawar High Court, D.I. Khan Bench dated  
25.9.1994 passed in W.P. No.58 of 1993)

Qayyum Nawaz s/o Shehzad,  
Machine Operator, Wood Working Centre,  
D.I. Khan and 9 others.

Appellants

Versus:

NWFP Small Industries Development Board,  
Peshawar through its Managing Director,  
Kohat Road, Peshawar and 4 others.

Respondents

For the appellants: Qazi Muhammad Anwar, ASC with  
Mr. Muhammad Zahoor Qureshi, Azad  
AOR

For the respondents: Mr. Muhammad Lateef, ASC with  
Haji M.A. Qayyum Mazhar, AOR

Date of hearing: 26.2.1999

*[Signature]*

JUDGMENT

RAJA AFRASIAB KHAN, J. To begin with,  
Qayyum Nawaz and nine others, the appellants were appointed on  
contract basis in the Wood Working Centre, D.I. Khan, under the  
management of Small Industries Development Board, N.W.F.P. by

ATTESTED

*[Signature]*  
Assistant Registrar  
Supreme Court of Pakistan  
Islamabad.

RJ/3

the competent authority on different dates. On the expiry of the periods, the contracts were further extended for a period of one year. After the expiry of the extended period, the appellants were paid leave encashment, gratuity and were accordingly relieved from service. They were, however, appointed on regular basis immediately after the termination of their service. The contract period of the appellants was not included in their regular service. A grievance notice under Section 25 of the Industrial Relations Ordinance, 1969 (hereinafter referred to as the Ordinance) was given by them to the respondent. It was not taken into consideration by the respondent and as such grievance petition was filed by them under Section 25-A of the Ordinance on 2.9.1990. It was mentioned in the petition that the appellants were entitled to be acknowledged as regular employees even during the alleged period of contract. This plea of the appellants was turned down by the Labour Court vide its decision dated 8.6.1992. An appeal was instituted by them challenging the validity of the decision of the Labour Court. The Labour Appellate Tribunal vide its judgment dated 17.2.1993 accepted the appeal holding that the appellants were the regular employees of the respondent. The operative part of the judgment of the learned Tribunal is as follows:-

"The crucial point for determination in this case is as to whether the appellants can be classified as workmen under the Industrial Relations Ordinance and Standing Orders Ordinance and if they qualify to be so whether they would still be governed by the contract agreements obtained from them at the time of their appointments or the terms and conditions of their services w

ATTESTED

Assistant Registrar  
Supreme Court of Pakistan  
Islamabad

be regulated by the said two enactments:  
Under the Standing Orders Ordinance there  
are the following categories of workmen:-

1. Permanent.
2. Probationers.
3. Badlis.
4. Temporary.
5. Apprentices.

There is practically no dispute between the parties, that but for the contract agreements all the appellants could qualify as permanent workmen. It is an admitted fact that the appellants performed their duties against the work of permanent nature and their period of employment was for a much longer period than the one which entitle them to be classified as permanent workmen under the Labour Laws. It is provided in Section-1 of the Standing Orders Ordinance, "Provided that no such agreement shall have the effect of taking away or diminishing any right or benefits available to the workmen under the provision of the schedule." It is thus manifest on the strength of this provision of law that it would be the Labour Laws which would govern the relation between the employer and the employees, and the contract agreements would not be a hurdle in application of the Labour Laws. These agreements of contract obtained from the appellants on various dates were apparently mala fide and were meant for depriving them of the benefits under the relevant laws. This fact cannot be denied that there had not occurred any break in service of any of the appellants as the same day their

ATTESTED

*[Signature]*  
Assistant Registrar  
Supreme Court of Pakistan  
Islamabad

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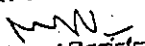
contracts were renewed on which it expired.  
The learned Labour Court has taken incorrect view of the law by giving precedence to the contract agreements over the Labour Laws. (Emphasis supplied)

This appeal is accordingly allowed and the judgment of the Labour Court is set aside and resultantly the relief prayed for in the grievance petition is granted to the appellants with costs."

The respondents filed Writ Petition No.58/93, which was accepted by the Peshawar High Court on 25.9.1994. Leave to appeal was granted to the appellants on 31.5.1995 on the ground that the appellate Tribunal was a Tribunal of fact as well as of law and its decision could not be termed as without lawful authority. It was observed that the contract having been obtained by the respondent from the appellants was based on mala fide.

2. Learned counsel for the appellants submitted that the High Court was not competent to interfere with a finding of fact "arrived at by the competent appellate forum inasmuch as, it was held that the respondent proceeded in the matter with mala fide in securing the contracts from its employees namely, the appellants. Learned counsel appearing on behalf of the contesting respondent argued that a contract was entered into between the parties and as such, the appellants could not be permitted to go against the express provisions of the said contract. In other words, the contention was that the period for which the appellants remained on contract, could not be counted towards the length of their regular service.

ATTESTED

  
Assistant Registrar  
Hon'ble Court of Pakistana  
Islamabad.

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3. After hearing the learned counsel for the parties at some length and perusing the record with their assistance, we hold the view that the appellate judgment having been rendered by the labour appellate Tribunal is lawful inasmuch as, it is based on due appraisal/assessment of evidence available on record. The Tribunal has concluded that the agreement entered into between the appellants and the respondent is based on mala fide to deprive them of their lawful rights. It was strange that the appellants were appointed on regular basis on the same day, when their contract period ended. The labour appellate Tribunal has rightly held that such agreements are not valid in view of the mandatory provisions of Section 4 of the West Pakistan Standing Orders Ordinance, 1969. This being the position, finding of fact given by the Labour Appellate Tribunal is not open to challenge under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 before the High Court. The Tribunal has considered the entire evidence of the parties and in the result, has determined a question of fact that the appellants are permanent workmen performing duties in the establishment of the respondent. It has not been shown by the respondent that the appellate judgment of the Tribunal is without lawful authority or based on mala fide. It is not the case of the respondent that the appellate Tribunal has no jurisdiction to interfere with the matter. It is well established law that a Writ Petition against such an order/judgment passed by a Tribunal of exclusive jurisdiction is competent only when it is shown that the judgment/order is without jurisdiction or without lawful authority or it is based on no evidence at all. No such case could be made out by the respondent in the High Court. The impugned judgment, on the face of

ATTESTED

*[Signature]*  
Assistant Registrar  
Supreme Court of Pakistan  
Islamabad.

15

it, is based on mere conjectures and surmises. It did not, at all, advert to the mandatory provisions of Article 199 of the Constitution under which the powers were exercised. This appeal is, therefore, allowed and the impugned judgment rendered by the High Court dated 25.9.1994 is declared to be without lawful authority and of no legal effect. It is, accordingly, set aside. The judgment of the labour appellate Tribunal dated 17.12.1993 is restored with no order as to

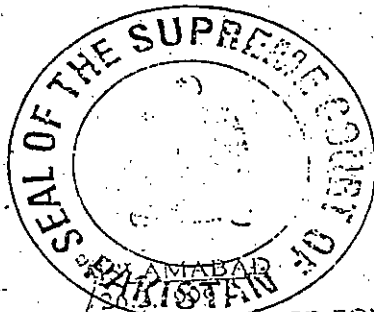
costs.

Sd/- *Muhammad Akbar Khan*  
Sd/- *Rajia Afzal Khan*  
Sd/- *Muhammad Bekir Jehangir*

*[Handwritten signature]*

Certified to be true copy

Assistant Registrar  
Supreme Court of Pakistan  
Islamabad



NOT APPROVED FOR REPORTING.

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GR No.  
Date of presentation  
No. of wards:  
No. of folios:  
Requisition Fee Rs.  
Copy Fee in  
Court Fee  
Date of copy:  
Date of delivery  
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State  
District  
Mardan

RJ/4

(16)

2.5 Apprentices and probationers --

- (1) One-half of the period of apprenticeship qualifies for pension.
- (2) The service of a probationer who is subsequently confirmed in a permanent post without interruption qualifies for pension.

2.6 **Training** – The time spent by a Government servant in approved training shall count as service qualifying for pension.

\*Note: – The period of training before actual appointment to Government service shall not count for pension.

2.7 **Leave** – All leave (other than extraordinary leave) counts as qualifying service for purposes of pension.

2.8 **Military Service** – (1) Military pensionable service which terminates before a pension has been earned in respect of it, when followed by Civil pensionable service, counts as part of such service provided that any bonus or gratuity received in lieu of pension on or since discharge from military service shall be refunded in lump sum or in monthly installments not exceeding 36. The military service of the individual concerned and the amount of gratuity paid to him should be verified by reference to the Controller of Military Accounts.

(2) Persons who joined the Armed Forces on or after the outbreak of World War-II, and rendered whole time satisfactory service in Government Forces under the British Rule in India and Pakistan and were appointment in a Civil pensionable post on or before the 18<sup>th</sup> July, 1949 shall be allowed to count such War Service not exceeding five years rendered between the 3<sup>rd</sup> September, 1939, and the 1<sup>st</sup> April, \*1946, for purpose of civil Pension and they shall not be required to refund military bonus or gratuity.

<sup>a</sup>Note – In the case of a civil employee who has rendered satisfactory paid military service in the World War-II, in addition to military service pensionable under the military Rules, before or after such war service but who did not earn a pension by his war service in conjunction with his other military service, that portion of the military service which was rendered before or after the war service shall be dealt with in accordance with the provisions of sub-rule (1). The war service portion (i.e. the period of service rendered between 3<sup>rd</sup> September, 1939, and 1<sup>st</sup> April, 1946) shall, however, be dealt with under sub-rule (1) or (2) as the Government servant may opt in this behalf, subject, of course, to the limitation prescribed in the respective sub-rule. If the war service is counted under sub-rule (1), the whole of it shall count, but if it is counted under sub-rule (2) only

\* Substituted *vide* notification No. SO(SR) V-3027/64, dated 9<sup>th</sup> January, 1965.

<sup>a</sup> Inserted by Government of West Pakistan Notification No. SO(SR) V-1274/68, dated 24<sup>th</sup> May, 1968.

completed years upto a maximum of five years shall count and the residue of war service shall not be counted under sub-rule (1).

If the entire military service, including war service is dealt with under sub-rule (1), the whole of the gratuity received in lieu of pension (but not that given as a reward of war service) shall have to be refunded by the Government servant concerned. If, however, the portion which was war service is dealt with under sub-rule (2) and the rest of the military service before or after the war under sub-rule (1). The amount of gratuity which the Government servant will refund in respect of the latter portion shall bear the same proportion to the total amount of gratuity received in lieu of pension the period dealt with under sub-rule (1) bears to the total period of military service, including the period of war service.

For the purpose of this note it is immaterial whether or not there was a break between the war service and other military service.

2.9 **Deputation** – Time spent by a Government servant holding pensionable post on deputation to (1) another Government (2) foreign service, or (3) service in a temporary or non-pensionable post under Government counts for pensions as if it were a time spent under the Government.

Note: **Rule of Proportion.** The 'Rule of proportion' and the other associated rules and accounting instructions shall continue to be operative and the apportionment of pensionary liability between the various Departments and Federal / Provincial Governments, as the case may be, shall be made by the audit and Accounts Officer issuing a Pension Payment Order. Finalization of pension cases shall not be held up on this account. If there is any dispute with regard to the apportionment of pensionary liability, the matter should be sorted out by the Audit and Accounts Officers involved. The authorities concerned are required to forward the pension case of the retired government servants to the audit office concerned. Complete in all respects and with the documents mentioned in (Annex).

No. SOSR-III(FD)4-36/75(Vol-II), FD-NWFP,  
Dated Peshawar, the 28<sup>th</sup> April, 1991.

2.10 **Suspension** – If a Government servant is suspended from service pending enquiry into his conduct, the period of suspension counts for pension if it is immediately followed by reinstatement, unless the Government servant reinstated with forfeiture of a part of his pay or allowances for the period of suspension.

**GOVERNMENT INSTRUCTIONS**

All period of suspension followed by reinstatement should qualify for pension regardless of the fact whether the Government servant was or was not allowed full pay and

Substitution due to Retraction

RJ-4

allowances for the period of suspension. In other words, the mere act of reinstatement should be deemed to have rendered the period of suspension as qualifying for pension.

Para-1 (j) of F.D. N.-W.F.P. Letter  
No. SO (SR-III) FD-4-36/76  
Dated 4<sup>th</sup> June, 1977 (Appendix-III)

2.11 **Forfeiture of Past Service** – A Government servant forfeits his past service in the following cases: -

- (a) Resignation of a post unless it is to take up another post service in which counts for pension.
- (b) Removal or dismissal from service.
- (c) Absence from duty without leave.

Note – The authority which sanctions the pension may commute retrospectively periods of absence without leave into extraordinary leave.

\*Note – In case of a civil servant, who, with the proper concurrence of the competent authority leaves service under the Government of NWFP 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.

### GOVERNMENT INSTRUCTIONS.

<sup>1</sup>Service in an Autonomous or Semi-Autonomous Body. For the purpose of grant of pension under these orders, the pay drawn and the effective service rendered by a Government servant in an autonomous or semi-autonomous body, the authorized capital of which is wholly subscribed by the Central and/or a Provincial Government, in a post, appointment to which is, by law, required to be made and the salary of which is required to be fixed by the Central or a Provincial Government shall be treated as pay drawn and effective service rendered in a post in Government service.

2.12 **Condonation of interruptions and deficiencies.** – (1) The Administrative Department may for purposes of pension condone all gaps between <sup>2</sup>[Periods of qualifying service] of a Government Servant.

(2) The Administrative Department may condone deficiency in qualifying service for pension upto six months provided the service is meritorious and the condonation, if allowed will bring the service upto 25 completed years of qualifying service.

<sup>1</sup> Inserted vide notification No.F.D.SR.-III/4-112/80, dated 22-11-1980.

<sup>2</sup> Para-9 of the Government of West Pakistan Finance Department letter No. SO (SR)-V-257/67 dated 27<sup>th</sup> April 1967 (Appendix-I)

<sup>3</sup> [ ] Substituted by Finance Department Notification No. SO(SR) V-174/68, dated 24<sup>th</sup> May, 1968.

### GOVERNMENT INSTRUCTIONS

For the purpose of grant of pension under Revised Rules and rates, 1967:

- (1) Unless it be otherwise provided by special rule or contract, the service of Government servant begin to qualify for pension from the date he takes charge of the office to which he is first appointed:
- (2) A deficiency of six months or less in the qualifying service of a Government servant shall be deemed to have been condoned;
- (3) A deficiency of more than six months but less than a year, may be condoned by the competent authority if both the conditions mentioned below were satisfied: -
  - (a) If the Government servant dies while in service or retires under circumstances beyond his control such as on becoming invalid or on abolition of his permanent post and his eventual selection for discharge, and, but for such contingency he would have completed another year of qualifying service, and.
  - (b) The service rendered by the Government servant was meritorious.
- (4) A deficiency of one full year or more shall not be condoned.

Para-10 of the Government of West Pakistan,  
Finance Department Letter No. SO (SR-V) 257/67,  
Dated 27<sup>th</sup> April, 1967 (Appendix-I), as amended *Vide* Government of  
N.-W.F.P., Letter No. SO (SR-II) FD/4-112/73,  
Dated 4<sup>th</sup> December, 1973. (Appendix-IV).

### GOVERNMENT INSTRUCTIONS

- (1) As in the existing rule, the period of extraordinary leave shall not be treated as qualifying service for pension but only as a bridge between the two periods of qualifying service. Interruption in service due to other reasons may be condoned provided such interruption is not due to any fault or willful act of the Government servant, like un-authorized absence, resignation or removal from service. Interruption due to removal on account of reduction and retrenchment of the post shall however be deemed to have been condoned. The periods of such interruptions shall not, however, count as qualifying service for pension. The action in respect of break in service should be completed by the head of the Administrative Department before forwarding the papers to the Audit Office.

(Government of N.-W.F.P., letter.No. S.O. (SR-III) FD 4-36/76,  
Dated 4<sup>th</sup> June, 1977, (Appendix-III)



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(2) Some confusion seems to exist in some quarters as to how condonation of interruptions between two spells of temporary/officiating service may be regulated under rule 2.12 (1) of the West Pakistan Civil Services Pension Rules. According to Rule 2.3 *ibid* temporary and officiating service followed by confirmation or temporary/officiating service of more than five years counts for pensions/gratuity. The provisions of Rule 2.12 (1) take cognizance of only those cases where the Government servant had prior to the interruption rendered periods of qualifying service and it is consider fit to permit him to count certain past qualifying service towards pension/gratuity. The condonation of interruptions in service with a view to allowing past Non-qualifying temporary/officiating service to qualify for pension/gratuity Under Rule 2.3 is not permissible. In other words condonation of interruptions for pension/gratuity in temporary/officiating service is permissible only where the broken period of temporary /officiating service is qualifying i.e. it exceeds five years, or is followed by confirmation. Where neither condition is fulfilled condonation of interruption is not permissible. To make it more clear the following illustrations are given: -

**First Illustration** - A Government servant has the following broken spells of temporary/officiating service: -

- (i) 5 years and one month followed by break;
- (ii) 3 years followed by break; and
- (iii) 6 years.

First and third spells are qualifying under Rule 2.3 and, therefore, can be counted (as 11 years and one month qualifying service). The second spell of service being not qualifying will not count and will be treated as a part of the gap in between the first and third spell of service.

**Second Illustration.** - A Government servant has the following broken spells of temporary/officiating service: -

- (i) 5 years and one month followed by break;
- (ii) 3 year followed by break; and
- (iii) 4 years and 5 months.

Only the first spell is qualifying. The second and the third spells are not qualifying. Therefore, neither of the two gaps can be condoned.

**Third Illustration.-** A Government Servant has the following broken spells of temporary/officiating service.

- (i) 5 years and one month followed by break;
- (ii) 3 years followed by break; and
- (iii) One year followed by confirmation.

The second spell is not qualifying. First and the third spells are qualifying, and the gap in between them can be condoned as in the case of the first illustration.

(Government of West Pakistan Finance Department  
Letter No. SO (SR) V-2866/67. Dated 5-7-1968).

Under sub-paragraphs (2) and (3) of paragraph 10 of the Finance Department's Letter No. S.O. (SR) V-257/67, dated 27<sup>th</sup> April, 1967 (Appendix-I), a deficiency of six months or less in the qualifying service shall be deemed to have been condoned, while a deficiency of more than six months but less than a year may be condoned by the competent authority subject to the conditions prescribed therein. This provision has replaced the existing provision in sub-rule (2) of Rule 2.12 of the West Pakistan Civil Services Pension Rule viz: the Administrative Department may condone deficiency in qualifying service for pension up to six months, provided the service is meritorious and the condonation, if allowed, will bring the service upto six months shall be deemed to have been condoned at any stage of qualifying service or is the condonation restricted to a particular stage of qualifying service. Finance Department, have, after thorough examination of the matter decided that the intention is not to restrict the operation of the concession to any particular stage but to allow condonation of a deficiency at any stage upto the 30<sup>th</sup> year. To illustrate this intention a deficiency of six months or less will be deemed to have been condoned so as to make 4 years and 6 months qualifying service as 5 years qualifying service, 9 years and six months qualifying service as 10 years qualifying service, 24 years and six months qualifying service as 25 years qualifying service and 29 years and six months qualifying service as 30 years qualifying service. Similarly, deficiencies exceeding six months but less than one year may be condoned by the competent authority (Finance Department) at all stages. Subject of course to the conditions prescribed in sub-para (3) of paragraph 10 of Finance Department's Letter No. S.O.(SR) V-257/67, dated 27<sup>th</sup> April, 1967. (Appendix-I).

(Government of West Pakistan Finance Department  
Letter No. SO (SR) V-1805/67, Dated 29.7.1976.

## GOVERNMENT INSTRUCTIONS

As a result of clarification issued vide Finance Department's Letter No. SOSR-III(FD)4-44/83 Vol-II dated 4.7.1989 regarding inadmissibility of condonation in non-qualifying service, cases of qualifying service where automatic condonation of deficiency up to six months is permissible are also being forwarded to this department. The correct position is that only non-qualifying service and not less than 10 years service is barred and there is no need to refer such cases any where for condonation.

No. SOSR-III(FD)4-44/83-III, FD- NWFP,  
Dated Peshawar, the 13<sup>th</sup> July, 1993.

IN THE FEDERAL SERVICE TRIBUNAL, 66-W, JUNAID PLAZA, F-7/G-7,  
BLUE AREA, SHAHRAH-E-QUAID-E-AZAM, ISLAMABAD.

D. No. 8302

Dated. 12-05-10

SUBJECT:- ORDER PASSED IN APPEAL NO.145(P)CS-2007 FILED BY  
MR. FAZAL E WAHID VS AFGHAN REFUGEES ETC.

A certified copy of the Judgment passed by this Honourable  
Tribunal in the Appeal noted in the subject is sent herewith for your  
information/compliance.

By Order

  
REGISTRAR

To,

1. Mr, Fazle-Wahid S/o Abdul Noor R/o Ghari Daulat Zai Tehsil & Distt. Mardan,  
Dispenser Civil Dispensary Sikandrai, Mardan.
2. Govt. of Pakistan through Secretary Interior Civil Secretariat, Islamabad
3. Commissioner, Afghan Refugees, NWFP, Peshawar
4. Secretary Health Department, NWFP Peshawar
5. Director General Health Services, NWFP, Peshawar
6. Executive Director Officer (Health), Mardan
7. District Coordination Officer Mardan
8. Secretary Finance NWFP Peshawar
9. Project Director Afghan Refugees NWFP, Peshawar
10. The Secretary Establishment Division, Govt. of Pakistan, Islamabad
11. The Solicitor, Law, Justice, Division, Islamabad.

*Judgment Sheet*  
IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

Appeal No: 145(P)CS/2007

Date of Institution	20.07.2007
Date of Hearing	29.01.2010
Date of Judgment	29.04.2010

APPELLANT: Fazal-e-Wahid, S/o Ahdil Noor, r/o Ghari Daulat Zai Tehsil & District Mardan Dispenser Civil Dispensary Sikandrai, Mardan.

RESPONDENT: i) Government of Pakistan through Secretary Interior Civil Secretariat, Islamabad;  
ii) Commissioner, Afghan Refugees NWFP, Peshawar.  
iii) Secretary, Health Department, NWFP, Peshawar.  
iv) Director General Health Services, NWFP Peshawar.  
v) Executive District Officer (Health) Mardan.  
vi) District Coordination Officer Mardan.  
vii) Secretary Finance NWFP Peshawar.  
viii) Project Director Afghan Refugees NWFP Peshawar.

Before: Mr. Moazzam Hayat, and  
Mr. Farrakh Qayyum, Members.

Present: Appellant with Mr. Anjad Ali, Advocate,  
Syed Asif Shah, Advocate for respondents and Mr.  
Huda Zaman, Civil Pleader,  
M/s Naseeb Khan and Yousuf Khan, Assistants, as  
DRs.

JUDGEMENT

MOAZZAM HAYAT, MEMBER: Appellant Fazl-e-Wahid was a qualified Dispenser. On 19.04.2007 a letter was sent to the Director General Health NWFP, now Khyber Pakhtoon Khwa. The subject of the letter was "counting of service rendered in Afghan Refugees towards seniority/pension with back benefits". It was stated that service rendered by the appellant in Afghan Refugees Organizations could not be counted towards his government service. Similar order had earlier been passed on 16.01.2006 on the representation of the appellant.

1. According to the respondents the appellant was a project employee. His services were discontinued on 13.12.1994 and thereafter he was appointed afresh, that too not through proper channel. It is maintained that according to the Finance Department letter dated 24.08.1995 he was not entitled to claim the benefits of his service in project.

2. We have heard the learned counsel for the respective parties and have also perused the record.

~~ATTACHED~~  
Registrar  
Federal Service Tribunal  
Islamabad

4. The appellant was a contractual employee of a project. He was not being paid by the Government for his service in the project. He thus could not equate himself with the employees of the Government. The judgment of the Supreme Court, relied upon by the appellant, is of no help to him since his case is different. The employees before the Supreme Court of Pakistan were paid by the Government whereas the appellant was a project employee, paid by the Afghan Refugees Organizations. Since he was a project employee, therefore, he could not claim to be at par with other civil servants.

5. Presently, the appellant is stated to be in service of the Provincial Government of Khyber Pukhtoon Khwa, former NWFP. The Federal Government has nothing to do with his claim for counting his past service.

6. For the above reasons, the appeal is dismissed.

7. There shall be no order as to costs. Parties shall be informed.

*[Handwritten Signature]*  
MEMBER

*[Handwritten Signature]*  
MEMBER

Islamabad, the April 29, 2010.

*[Handwritten Signature]*  
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*[Handwritten Signature]*  
Federal Services Tribunal  
Islamabad