

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7741/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN... MEMBER (E)

Engineer Ziarat Khan, Chief Commissioner Mines Labour Welfare (R)
Commissionerate of Mines Labour Welfare Attached Department
Complex Khyber Road, Peshawar. (Appellant)

VERSUS

1. Secretary to Government of kp Minerals Development Department, Peshawar.
2. Director General Mines and Minerals Industries Development Department, Civil Secretariat, Peshawar.
3. Director General Mines and Minerals, Peshawar.
4. Assistant Director Mines and Minerals
5. Secretary to Government of kp Mines and Minerals, Civil Secretariat, Peshawar.

....(Respondents)

Mr. Arbab Kaleem Ullah
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....10.11.2021
Date of Hearing.....06.11.2023
Date of Decision.....06.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of instant appeal, the fixation/pay of the appellant may kindly be revisited and the respondents may please be directed for pay protection on appointment from



one post to another and counted the service rendered in Sarhad Mineral (Pvt) Ltd towards counting pension of petitioner.”

2. Brief facts of the case, as given in the memorandum of appeal, that initially the appellant was employed as Assistant Mining Engineer (BPS-17) in Sarhad Development Authority on 15.05.1985. Subsequently, the appellant applied through proper channel for the post of Inspector of Mines BPS-17. That after qualifying the competitive exam, the appellant was relieved and he assumed the charge of the post of Inspector of Mines in the Inspectorate of Mines Labour Welfare NWFP Peshawar on 10.07.1989. That the appellant was drawing basic salary 3640/ P.M while after joining the post of Inspector of Mines, the salary was fixed 2065/ P.M. That vide letter dated 04.06.2011, the Finance Department allowed the benefits of protection of pay to the employees of autonomous bodies on their subsequent appointment in government service. He file departmental appeal which was rejected, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that appellant before joining the Government Service, obtained NOC from Sarhad Development Authority. The appellant applied through proper channel for the post of Inspector Mines. The appellant was appointed through proper channel , thereafter he was relieved by the authority to join his new assignment. He



submitted that appellant is entitled for the benefits of pay and protection even then his appeal was rejected which is illegal, hence, the appeal of the appellant be accepted as prayed for.

5. Conversely, learned Deputy District Attorney for the respondents contended that appellant has been treated in accordance with law and rules. He further contended that appellant is not entitled for pay protection and his appeal to this respect was rightly turned down by the authority. Though the Finance Department vide letter dated 04.06.2021 has allowed the benefits of pay protection to the employee of autonomous bodies on their subsequent appointment in government service, but they pay protection to the appellant is not admissible on the ground that he has joined provincial government service prior to the issuance of above mentioned notification. He requested for dismissal of instant service appeal.


6. Perusal of record reveals that appellant was initially appointed as Assistant Mining Engineer on regular basis vide order dated 15.05.1985. Later on, he applied through proper channel for the post of inspector in the Inspectorate of mines Labour Welfare NWFP and was appointed on 14.02.1993 as Inspector BPS-17, was relieved from duty by Sarhad development authority vide letter dated 17.02.1993. Afterwards, the Finance Department issued notification dated 04.06.2011 in which benefits of pay protection was allowed to the employees of the autonomous body on their subsequently appointment in Government service who have adopted scheme of basic pay scale in toto, provided that they have applied for the post through proper channel. The above referred notification was based on the judgment of FST Islamabad in appeal No. 1921 CS/2005 in case titled Sajjad Rashid and others. It is evident that the appellant was employee of the Sarhad Development Authority, which was an autonomous body. Sarhad


Development Authority had adopted the schemes of basis pay scale of

government for its employees from the date of its incorporation vide letter dated 09.10.2017. The appellant applied through proper channel and was appointed as Inspector of Mines BPS-17, therefore, he is entitled for fixation/protection of pay of appointment from one post to another in light of notification of the Finance Department dated 04.06.2011.

7. For what has been discussed above, we are unison to accept the appeal in hand as prayed for. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER

06.11.2023 1

Learned counsel for the appellant present. Mr. Mohammad Jan
learned District Attorney for the respondents present..

2. Vide our detailed judgement of today placed on file, we are unison
to accept the appeal in hand as prayed for. Consign.

3. *Pronounced in open court in Peshawar and given under our hands
and seal of the Tribunal on this 6th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)