

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 2319/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Muhammad Imran, Deputy Director-IT/MIS Manager,  
Directorate of Transport & Mass Transit, Khyber Pakhtunkhwa,  
Peshawar..... (*Appellant*)

Versus

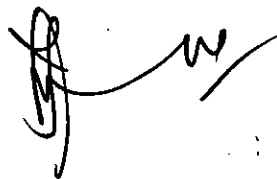
1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Establishment Department, Civil Secretariat Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa Finance Department, Civil Secretariat Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa Transport & Mass Transit Department, Civil Secretariat Peshawar.
5. The Director, Transport & Mass Transit, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Mian Asif Aman, ... For appellant  
Mr. Asif Masood Ali Shah, ... For respondents  
Deputy District Attorney

Date of Institution..... 03.11.2023  
Date of Hearing..... 19.12.2023  
Date of Decision..... 19.12.2023

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 2320/2023 titled “Waqas Saliheen Versus Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and others”, as in both the appeals common questions of law and facts are involved.



2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer as follows:-

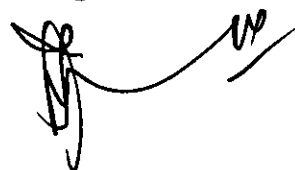
*“On acceptance of the service appeal, this Hon’ble Tribunal may graciously be pleased to declare the impugned decision of abolition of the post of Deputy Director-IT MIS Manager (BPS- 18) pursuant to the letters dated 13.06.2023 and 14.06.2023 of the Director and Secretary Transport & Mass Transit Department and letter dated 07.07.2023 of the Secretary Finance and letter dated 10.07.2023 (wrongly written as 10.06.2023) by the Secretary Transport and Mass Transit Department to the Secretary Establishment Department, as without lawful authority and hence of no legal effect and to strike down the same. This august Tribunal may further be pleased to direct the respondents to act in the matter in accordance with law and restore the previous position of the appellant as Deputy Director-IT/MIS Manager (BPS- 18) as Incharge of MIS Cell, Directorate of Transport, Khyber Pakhtunkhwa with effect from the date of abolition of the post with all consequential back benefits.*

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

3. Brief facts of the case, as given in the memorandum of appeal, are that in 2010, the Provincial Government in Transport Department approved an Annual Development Programme i.e “The Establishment of Automation of Transport Department (Computerization of Route Permit) (the ATD-CRP Cell) with aims and objectives to introduce an effective sustainable system to maintain updated database of commercial



vehicles, equip policing and checking agencies with on-the-spot ease and verification of Route Permits and its validity, an IT enabled system consisting of application, software, hardware, networking and communication, enabling province-wise connectivity, ensuring transparency to eliminate forgery in Route Permits and ensure efficient revenue receipts. The management structure and manpower requirements of the Cell provided for the MIS Manager and 18 other posts of various nomenclatures. Accordingly, the post of Deputy Director-II/MIS Manager (BPS-18) and other posts were advertised on 11.06.2010, for which the appellant, being eligible and qualified, applied. The appellant, alongwith other aspirants, was shortlisted by the project Shortlisting Committee and appointed after observing all codal formalities vide office order dated 13.01.2011. In 2017, the project was regularized through Khyber Pakhtunkhwa Employees of Transport Department (Regularization of Services) Act 2017. Through a Notification dated 21.12.2017, employees of the project, including the appellant, were regularized. The post was properly sanctioned by the Finance Department vide a letter dated 20.11.2017. After the regularization, the matter for framing the Service Rules was taken up by the Administrative Department. A detailed scrutiny of the case was carried out including the job description of each post and after threadbare discussion the Standing Service Rules Committee recommended the Service Rules for MIS Cell which were notified in the Gazette of Khyber Pakhtunkhwa vide notification dated 14.07.2020. Vide notification dated 14.06.2017, the department assigned the



appellant with an additional charge of the post of Project Director of the Project "Establishment of Transport Inspection Station in Khyber Pakhtunkhwa" for a period of 03 and a half years. The appellant vide office order dated 03.05.2023 was declared as Convener/Coordinator of Computerized Driving License. Director Transport vide letter dated 24.12.2019 issued the work distribution in the Directorate of Transport wherein the Deputy Director IT/MIS was given all IT related matters and ADP projects. Through another work distribution in the Directorate vide letter dated 12.07.2021, the Deputy Director IT/MIS was given all IT/MIS related subjects and matters relating to computerized driving license, computerized Route Permit and Fitness Certificate. MIS Cell was established in 2011 as one window operation for issuance of route permit under the scheme Automation of Transport-Computerization of Route Permit and the appellant, alongwith staff, had been working in MIS Cell since 2011. The Director Transport wrote a letter dated 13.06.2023 to the Secretary Transport & Mass Transit Department recommending the abolition of the post of appellant declaring it as redundant. The Secretary, without looking into the matter and undertaking any spadework or taking the opinion of the Establishment Department, forwarded the matter to the Secretary Finance vide letter dated 14.06.2023 to abolish the post. Accordingly, the Finance Department deleted the post from the Budget Book and informed the Secretary vide letter dated 07.07.2023. On the deletion of the post, the Secretary Transport vide letter dated 10.07.2023 requested the Establishment Department for placing the services of the appellant at the



disposal of the Surplus Pool Wing of the Establishment Department under the Surplus Pool Policy. The Establishment Department did not take any decision and salary of the appellant was stopped as it required creation of the post at the strength of Establishment Department which was not done. Feeling aggrieved, the appellant preferred representation to the Chief Secretary Government of Khyber Pakhtunkhwa which was not decided. He filed writ petition No. 3206-P/2023 before the Hon'ble Peshawar High Court which was disposed of vide order dated 13.09.2023 with the direction to respondent No. 1 to decide the appeal within one month, which was not decided and after completion of one month period, the appellant filed the instant service appeal for redressal of his grievance.

4. Respondents were put on notice. Respondents No. 4 & 5 submitted their reply/comments on the appeal. Vide statement dated 14.12.2023, available on file, Mr. Asad Ali Khan, Assistant Advocate General stated on oath that he had been instructed by respondents No. 1 to 3 to rely on the reply already filed by respondents No. 4 & 5. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant had not been treated in accordance with law, rules and policy on the subject. He argued that appointment of Caretaker Government in terms of Article 224-(1A) of the Constitution



of Islamic Republic of Pakistan, 1973 was a transient arrangement and according to the verdict of the august Supreme Court of Pakistan, the caretaker government would enjoy limited powers of administrative continuity within available resources, preventing any major decision but in case of the appellant, a major decision had been taken which was out of the mandate of the caretaker provincial government. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the project was sanctioned according to the needs of the time and all the staff of the project was recruited on contract/fixed pay for one year, renewable for further period. He further argued that printing of route permits had already been deployed in the Provincial Transport Authority and all Regional Transport Authorities across the Province which were working independently under the Motor Vehicles Ordinance 1965. He stated that there was no provision in the said Ordinance regarding interfering in the matters of and overlapping the domain of PTA and RTA by MIS with regard to the issuance of route permits, therefore, the post of DD (IT)/Manager MIS became completely redundant. He further argued that under the Delegation of Powers, Second Schedule, Powers Common to all Departments, Administrative Department had the full powers to abolish a post. Since the post was not required to the Directorate of Transport Department anymore and was abolished, the appellant was rightly referred to surplus pool wing of the Establishment Department



for onward posting in the appropriate department so as to use his services in the best public interest. He further argued the appellant had not submitted his arrival report in the Surplus Pool Wing of the Establishment Department and his representation was still pending as he did not pursue the same for final decision. He requested that the appeal might be dismissed.


7. Arguments and record presented before us transpires that the appellant was initially appointed in a project of the provincial government in its Transport Department on contract basis and fixed pay, on 13.01.2011, initially for a period of six months and after its expiry his contract was renewed. Services of all the employees of that project titled "Automation of Transport Department (Computerization of Route Permits)" including the appellant were regularized through an act of the Provincial Assembly, Act No. XX of 2017, on 1st June 2017. In pursuance of that, notification for regularization of services of the appellant and other employees of the project was issued on 21<sup>st</sup> December, 2017. Through a notification dated 6<sup>th</sup> October 2021, service rules were also framed for the newly created positions, including that of the appellant, and he worked at the position of Deputy Director MIS till such time that the post was abolished in July 2023.

8. In case of Mr. Waqas Saliheen in connected Service Appeal No. 2320/2023, all the facts of the case were of similar nature. The appellant served as Business Development Officer till the post was abolished in July 2023.



9. The job description for the post of Deputy Director MIS was primarily the computerization of Route Permits, as is clear from an order dated 16.05.2023 provided by the appellant. Another order dated 12.07.2021 attached with the appeal indicates computerization of Driving License also as one of the jobs in addition to Route Permits. Through a letter of Director Transport dated 13.06.2023, attached with the appeal, it has been made clear that the subject of route permits has been given to the Provincial Transport Authority and all the Regional Transport Authorities, working independently under the Motor Vehicle Ordinance 1965. In our opinion, it has been rightly pointed out in the same letter that keeping the subject of Route Permits with the Directorate of Transport would be an overlapping and interference in the domain of PTA and RTAs, which was not allowed under the Motor Vehicle Ordinance 1965. In view of this distribution of work to other agencies, the position of appellant was understandably no more required to the Transport Department and its Directorate, and hence declared surplus. As far as the position of Business Development Officer is concerned, as stated by the learned Deputy District Attorney, it was a requirement under the project but when the matter was taken on the regular side, it was noted that the position had no utility and was thus declared surplus.

10. On a point raised by the learned counsel for the appellants that they were declared surplus by a wrong authority, the respondents produced the delegation of financial powers according to which, for





abolition of posts, the administrative department had full powers in respect of posts of Category I and II. Hence the objection of the learned counsel for the appellants holds no ground. On another point raised by him that posts were not created in the surplus pool for the appellants and that their salaries had been stopped, he was asked whether the appellants had reported to the Establishment Department, to which he responded in negative. It was clarified by the learned Deputy District Attorney that the appellants had to report to the Establishment Department first and then their case for creation of post would be settled, thus settling the issue of salary also.


11. From the above discussion, it is clear that the positions on which the appellants were working had become redundant and their services were no more required, hence they were declared surplus. They had to report to the Establishment Department, as the surplus pool of officers and officials is maintained by them, but instead of reporting there, the appellants indulged in litigation. Resultantly their salaries were stopped. It would have been in the fitness of the matter that they should have reported immediately to the Establishment Department so that a case should have been taken up with the Finance Department for creation of posts in surplus pool so that salary of the appellants could have been processed. Moreover placing the services of the appellants in the surplus pool means that they would be at the disposal of Establishment Department, which deals with service matters of all the employees of provincial government, and as soon as any position, according to their



qualification and experience, becomes available, they would be transferred and adjusted. Till such time that they are adjusted, placement in surplus pool secures the service and allied matters of the appellants.

12. In view of foregoing, this appeal, alongwith connected appeal, is dismissed. Cost shall follow the events. Consign.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 19<sup>th</sup> day of December, 2023.*


  
(FARIEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

*\*Fazle Subhan, P.S\**

SA 2319/2023

- 19<sup>th</sup> Dec. 2023
01. Mian Asif Aman, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
02. Vide our detailed judgment consisting of 10 pages, the appeal is dismissed. Cost shall follow the events. Consign.
03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19<sup>th</sup> day of December, 2023.*

  
(FARHEEN PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member (J)

\*Fazal Subhan PS\*