

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1128/2022

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

Fazli Raziq, Deputy Chief Inspector of Mines, Peshawar

.... (Appellant)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Minerals Department, Peshawar
5. The Chief Inspector of Mines, Inspectorate of Mines, Peshawar.
6. The PMDC through its Managing Director 13, H/9, P.O Shaigan, Islamabad.

.... (Respondents)

Mr. Pervez Khan
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....15.07.2022
Date of Hearing.....16.11.2023
Date of Decision.....16.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 against Mineral Development Department letter No. SOE/MDD.1-18/21995 dated 28.06.2022 issued in light of Finance Department letter dated No. FD(SOSR-1) 12-42021/Fazli Raziq dated 27.01.2022 referring Finance Department circular letter No. FD(SR-1)12-1/2011 dated 04.06.2011 whereby the appeal of

the appellant for protection of pay in autonomous body was declare not admissible with the prayer that on acceptance of this amended appeal, the impugned order 28.06.2022 may graciously be set aside being illegal and passed in violation of this Hon'able Tribunal maintained by Apex Court and the respondents may further please be directed to grant pay protection alongwith arrears to the appellant of his previous service render as Assistant Mining Engineer (BPS-17) in PMDC w.e.f 03.11.1990 to 31.01.1995 from the date of his appointment as Inspector of Mines (BPS-17) in the Inspectorate of Mines Labour Welfare Khyber Pakhtunkhwa as already granted by this Hon'able Tribunal in its numerous judgments under the rule of consistency.

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was initially appointed in Pakistan Mineral Development Corporation (PMDC) as Assistant Mining Engineer (BS-17) on 03.11.1990. Inspectorate of Mines Labour Welfare of Khyber Pakhtunkhwa advertised the posts of Inspector of Mines through Public Service Commission. Appellant applied through proper channel for the said post and was appointed as Inspector of Mines(BPS-17) vide notification dated 04.01.1995. He was relieved from post of Assistant Mining Engineer vide order dated 24.01.1995 and assumed the charge of the post of Inspector Mines on 01.02.1995. Appellant taking precedent from case of Mian Farooq Iqbal and Mumtaz Khan of the same department requested respondent for pay protection of his previous service and challenged it under the Finance Department notification dated 04.06.2011. After inter departmental correspondence between the Administration Department, Finance Department and Law Department the request of appellant was regretted vide impugned order dated 28.06.2022, hence the appeal in hand.



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. He further argued that the appellant had served the department PMDC w.c.f 03.11.1990 to 31.01.1995 who applied to the post of Inspector Mines (BS-17) in Directorate of Labour Welfare Peshawar through proper channel. On selection through Khyber Pakhtunkhwa Public Service Commission, he was properly relieved by PMDC. He further argued that appellant was serving as Assistant Engineer and joined the Government Department as Inspector Mines both the posts are of same grade and has same time scale as notified by the government. All the criteria mentioned in the Finance Letter dated 04.06.2011 was fulfilled by the appellant before joining the Government Service. Appellant is entitled for fixation of pay protection on appointment of one post to another in light of notification of Finance Department dated 04.06.2011.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that both the posts are of same pay scale, however, the appellant joined the service prior to the issuance of Finance Department Khyber Pakhtunkhwa, therefore, he is not entitled for pay protection. Here referring to para-5 of written defense of the respondents did not deny facts and circumstances of the service appeal. He also contended that the question of retrospectively and prospectively relating to Finance Department circular dated 04.06.2011 had been decided by the Apex Court in civil Appeal No: 1308/2019 dated 27.11.2019 of Mian

JC Farooq Iqbal.




6. Perusal of record reveals that the appellant had applied to the post of Inspector Mines (BS-17) in 1995 through proper channel and on appointment he was properly relieved by PMDC on 24.01.1995. So, there was no service gap or break between his previous service and new appointment through Khyber Pakhtunkhwa Public Service Commission. The question of law arising out of the Finance department circular dated 04.06.2011 with regard to its retrospectively or prospectively had been decided by the Apex Court in the Civil Appeal No.1308/2019 of MianFarooqIqbal. Astonishingly, the respondents had implemented it vide notification No. FD(SOSR-I)/12-4/2020 dated 15.06.2020 but in the case of present appellant unnecessary and protracted inter departmental correspondence were resorted to for unknown reasons, driven the appellant from pillar to post. The laid down principle of consistency enunciated in 1996 SCMR is relevant and quite apt to be reproduced;

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“If the Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum.”


7. It is observed that despite the above clear verdict of Apex Court and the respondent department had precedented the case of MianFarooq Iqbal to whom benefits of pay protection of previous service were granted vide Notification dated 15.06.2020, the case of similarly placed appellant was treated as a shuttle cock. It is pathetic and deplorable to note that despite legal opinion of Advocate General office communicated to respondent No.3




through Law Department, respondent No.3 shifted responsibility when advised respondent No.2 "that the case may be examined light of Finance Department's circular letter No. FD (SR-I)12-1/2011 dated 04.06.2021" ignoring the fact that being a financial matter falling in its ambit of functions under the Rules of Business (1985) and it had already exercised that authority when issued Notification dated 15.06.2020 in respect of MianFarooqIqbal. It is therefore, imperative to advise the Chief Secretary, Khyber Pakhtunkhwa to issue elaborate instructions to all departments in general and regulatory departments in particular to adhere to the distribution of functions assigned to these departments under the Khyber Pakhtunkhwa Government Rules of Business (1985) framed under Article 139 of the Constitution; especially in litigation cases when there are clear directions and elaborate judgments in unequivocal terms by the Hon'ble superior judiciary.

8. As a sequel to the preceding paras, we have arrived at the conclusion that the prayer of appellant for pay protection is covered under the existing scheme of things duly upheld by the Apex Court.He was therefore entitled for the benefits of pay protection of previous service rendered under PMDC w.e.f 03.11.1993 to 31.01.1995. The service appeal is therefore, allowed as prayed for and the impugned order dated 28.06.2022 is set aside. Copy this judgment be also issued to respondent No.1 for compliance. Costs shall follow the event. Consign

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (I)


(RASHIDA BANO)
Member (J)


ORDER


16.11.2023 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, the appeal in hand is allowed as prayed for. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)