

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6644/2021

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

Ashiq Hussain S/O Qadam Ali, Ex-Employee of Federal Levy Force,
Kurram Agency. (Appellant)

VERSUS

1. Provincial Government through Chief Secretary, Civil Secretariat Peshawar.
2. Secretary Law and Order FATA, FATA Levy Force, FATA Secretariat, Warsak Road, Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. Deputy Commandant Kurram Agency. (Respondents)

Mr. Muhammad Ayub Khan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....15.10.2021
Date of Hearing.....17.11.2023
Date of Decision.....17.11.2023

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 impugned recovery order dated 09.02.2015 may kindly be set aside being illegal and the respondents may further be directed to release the pension of the appellant with interest.”

2. Brief facts of the case, as given in the memorandum of appeal, that the appellant was serving in Levy Force Kurram Agency (now called as District

Kurram); that on attaining the age of superannuation, he was not retired and was directed by the competent authority to keep continue his duties; that the appellant thus kept performing their duties with zeal and zest even after attaining the age of superannuation and he was paid salaries in respect of the duties performed by him; that on retirement of the appellant, letter/circular dated 09.12.2015 was issued by the respondent No. 2, whereby it was directed that the salaries received by the appellant after reaching the age of superannuation may be recovered from him; that the same was challenged by some of the colleagues of the appellant through filing of Writ Petition No. 4485-P/2015 in the august Peshawar High Court, Peshawar, which was allowed vide judgment dated 19.05.2016; the appellant also challenged it in writ petition No. 4311-P/2017 that the appellant agitated the matter before the concerned Authority through filing of departmental appeal, however no response was received, therefore, the appellant filed Writ Petition in the august Peshawar High Court, Peshawar, however on account of lack of jurisdiction in the matter, the Writ Petition was treated as service appeal and was sent to Federal Service Tribunal; that in the meanwhile, Federal Levy Force Regulations 2012 was repealed through Khyber Pakhtunkhwa Ordinance No. 1 of 2019, according to which the Federal Levies and Khasadar Force were provincialized, therefore, the appeals were returned by Federal Service Tribunal to the appellant for seeking remedy from appropriate forum, hence the appellant approached this Tribunal through filing of service appeal for redressal of their grievance.

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 contended that the duty performed by the appellant beyond the age of their superannuation was in compliance of directions

of the competent authority and not on account of any fraud or misrepresentation; that the respondents have also conceded in their comments submitted in the august Peshawar High Court, Peshawar, that the salaries paid to certain Levy Officers after the age of their superannuation have rightly been paid to them; that sufficient vacancies of various posts were available and the appellants were fit for promotion, however the respondents failed to conduct DPC in time, resulting in retirement of the appellant without their due promotion; that the appellant was treated with discrimination and their legal rights were infringed due to lethargic attitude of the respondents; that the Writ Petition filed by certain colleagues of the appellant was allowed by the august Peshawar High Court, Peshawar vide judgment dated 19.05.2016 and they were granted one step promotion, therefore, the appellant being similarly placed employees is entitled to the same benefits, however the same was denied to him with mala-fide intention; that the directions embodied in the decision of the Secretary (Law & Order)/Appellate Authority dated 29.05.2015 should be strictly and promptly complied with in letter and spirit.

5. Conversely, learned District Attorney for the respondents contended that appellant has been treated in accordance with law and rules. He further contended that the appellant having no locus standi to file the instant appeal; that the matter was not agitated by the appellant, while he was in service, therefore, he is not entitled to agitate his grievance at such belated stage, when he was already retired from service; that the appeal is time barred, hence, liable to be dismissed with costs.

6. Perusal of record reveals that on account of certain exigencies, certain Levy Officials were not given retirement even on attaining the age of superannuation, who carried on their duties and they were paid salaries for the same. It is well settled principle of law that once payments are received by any person for services rendered, without any misrepresentation or fraud by him the same should



not be recovered.

7. The appellants have specifically alleged in para No. 5 & 6 of facts of their appeal that they moved appeal before the appellate Authority/Secretary (Law & Order) FATA Levy Force, FATA Secretariat Peshawar, which was decided vide order dated 29.05.2015, whereby directions were issued to the then Political Agent Kurram Agency (Now Deputy Commissioner District Kurram) to reinstate and give one step promotion to the appellant but they were compulsorily retired. The aforementioned order dated 29.05.2015 passed by appellate Authority/Secretary (Law & Order) FATA Levy Force, FATA Secretariat Peshawar is reproduced as below:-

"Order No.CSF/N/4-Levy/Appeal/2015.

Appellants through the instant appeal has challenged their retirement order dated 03.04.2015 on the ground that they were eligible for promotion from 23.04.2014 when FATA Secretariat circulated new posts and submitted numerous applications in this regard, however, meeting of Departmental Promotion Committee has not been convened and consequently they were retired.

Documentary evidence and record placed before this Authority was perused minutely, which reveal that meeting of Departmental Promotion Committee of Kurram Levy Force has not been convened since long and one was convened on 07.03.2015, however, the same was not held due to some pre-occupation while the appellants were in service at that time as is evident from record. Thus on factual side, the submission of the appellants carries weight. Though Federal Levies service amended rules 2013 are silent in this regard, however, the principles of natural justice and principles of law laid down by the honourable Supreme Court of Pakistan in various SCMRs provide necessary guidance in this regard.

Firstly, it is an established principle of natural justice that no one can be punished for the action or in-action of others. If meeting of Departmental Promotion Committee was not convened or held, the appellants cannot be punished for in-action of others. Secondly, it has been held in 1985 SCMR 1394, 1994 SCMR-1334 and 1998 SCMR-736, that an incumbent if otherwise found eligible and fit for promotion shall be given promotion with back benefits even after retirement.

Above in view, appeal of the appellants being logical, factual and supported by relevant rules is




accepted. The appellants are reinstated on the grounds quoted above and they may be promoted against their respective next higher ranks subject to seniority cum fitness otherwise their retirement as per rules would be correct.

Appeal disposed of in the above terms.

(Secretary (Law & Order)/Appellate Authority.

8. In light of the above, so far as the grievance of the appellant regarding pro-forma promotion is concerned, it is directed that the directions embodied in the decision of the Secretary (Law & Order)/Appellate Authority dated 29.05.2015 should be strictly complied with in letter and spirit and the benefits of the same be extended to the appellant. In addition thereto, it should be pointed out that all those appellants, whose pensions have been withheld due to impugned action or in-action of the respondents should be released forthwith but strictly in accordance with law. We are unanimous to dispose of instant appeal accordingly. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 17th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)

Kaleemullah


(RASHIDA BANO)
Member(J)

ORDER

17.11.2023 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement of today placed on file, the appeal in hand is disposed of. 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 17th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member(J)