

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.158/2024

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

Dr. Alamzeb, Director General (Extension) Livestock & Diary Development
Department, Khyber Pakhtunkhwa.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.
2. Secretary Livestock, Fisheries & Cooperative Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Establishment, Government of Khyber Pakhtunkhwa, Peshawar.
4. Muhammad Ijaz Ali, Director General (Research) Livestock Research, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Javed Iqbal Gulbella
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution..... 18.01.2024
Date of Hearing..... 06.02.2024
Date of Decision..... 06.02.2024

JUDGMENT

RashidaBano, Member (J): The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“It is therefore, most humbly prayed that on acceptance of the instant Service Appeal, the impugned summary dated. 01.11.2023 of the Office of the Secretary Establishment and impugned Office Order dated 10.01.2024 of the Chief Secretary KPK, Peshawar may kindly be declared as illegal, unlawful, unwarranted and the same may be set aside and by doing so the Appellant be allowed to continue and act as Director General Livestock (Extension) and

Dairy Development Department, Khyber Pakhtunkhwa till his retirement upon the basis of superannuation i.e. .24.03.2024.”

2. Brief facts of the case as given in the memorandum of appeal are that appellant was working as Director General of Livestock (Extension) and Dairy Development Khyber Pakhtunkhwa, Peshawar. He was regularly promoted to BS-20 vide notification dated 27.05.2022 and was working on the said post. That being close to the age of superannuation, appellant has been accorded the encashment of 365 in lieu of LPR vide notification dated 17.08.2023. That on 01.11.2023 a summary was put up before the Worthy Chief Minister Khyber Pakhtunkhwa seeking the transfer of the appellant from the post of Director General Livestock (Extension) to some other post by replacing the appellant. Feeling aggrieved appellant filed representation which was turned down, 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant contended that appellant is at the verge of his retirement and that too on the basis of superannuation, then moving such like nefarious summary at this juncture is certainly illegal and malicious one. He further contended that sending officer on deputation without his consent and without any application on his behalf that too without any corresponding mechanism and understating between borrowing and borrower agencies are missing, so the very summary is also not sustainable and tenable in the eyes of law. He further contended that even the leave encashment is sanctioned up till his superannuation upon the same post, so on this score alone the setting at naught of the impugned summary is indispensable.




5. Conversely, learned Deputy District Attorney contended that neither promotion notification nor sanction of order to the encashment of leave of a civil servant makes him entitled to retain a specific post till the date of superannuation. He further argued that processing of summaries is routine business of the Government Department for seeking approval of the competent forum on various issues as no order has yet been passed regarding transfer of the appellant. He further contended that as per rules no civil servant is exempted of transfer during last year of retirement as the competent authority is empowered under section 10 of the Civil Servant Act, 1973 to transfer civil servant anywhere in the best public interest.

6. Perusal of record reveals that appellant brought instant appeal by challenging a summary dated 01.11.2023 moved to competent authority by the Secretary Establishment whereby appellant was proposed to be transferred and posted as Project Director PMU University of Veterinary and Animal Science (UVAS) Swat against which, appellant filed representation which was turn down vide order dated 10.01.2024.

7. It is pertinent to mention here that for approaching this tribunal under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, there must be final and appellate order which can be challenged before this tribunal. Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read as;

“Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, prefer an appeal of the Tribunal having jurisdiction in the matter.”

In the instant case there is no original order by the authority, which can be challenged in service appeal because only summary was sent which still not approved by the authority.


 In accordance with Rule 3 of the Government Servants Appeals Rule, 1986:

"A civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms and condition of his service may within thirty days from the date of communication of the order to him, prefer an appeal to appellate authority."

8. It is admitted fact that when summary was moved for the transfer of the appellant by respondent No.3 to authority which is not yet decided. Therefore, practically in field there is no order passed by the authority in terms of Rule 3 of the Appeals Rules, 1986. So any application/representation filed by the appellant to Chief Secretary legally speaking cannot be considered as appeal for want of original and final order passed/issued by the authority, when there is no order then there lies no appeal. So order dated 11.1.2024 issued by the Chief Secretary does not falls within definition of appellate order as is required under section 4 of Khyber Pakhtunkhwa service tribunal Act, 1974.

9. In our humble view, the appeal in hand is not maintainable, as there is no original or appellate order as is required under section 4 of Service Tribunal Act, 1974 for approaching this Tribunal, hence dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 6th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

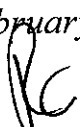
ORDER
06.02.2024

1 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, the appeal in hand is not maintainable, as there is no original or appellate order required under Section 4 of Service Tribunal Act, 1974 for approaching this tribunal, hence dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 6th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)