

**BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Tribunal Appeal No. 1060 of 2023

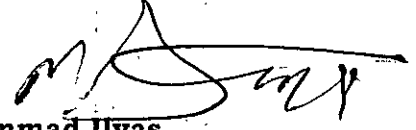
Mr. Sada Khan

Versus

DISTRICT EDUCATION OFFICER LAKKI MARWAT and other

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Muhammad Ilyas
District Education Officer
(M) Lakki Marwat

29-02-2024
Peshawar

BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL,
PESHAWAR

Service Tribunal Appeal No. 1060 of 2023

Mr. Sada Khan

Versus

DISTRICT EDUCATION OFFICER LAKKI MARWAT and other

Written Reply on behalf of Respondent No1 & 2

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11385

Dated 27-02-2024

Respectfully Sheweth:

Preliminary Objections:

- A. The appeal is wholly incompetent and untenable.
- B. The appellant has not come to the Hon'ble tribunal with clean hands.
- C. The appeal is filed by the petitioner with malafide intent.
- D. The appeal is suffer from exaggeration and mis-statement.
- E. The appellant has no locus standi and cause of action.
- F. The appellant has not come to the Hon'ble Tribunal with clean hands. The appeal also suffers from mis-statement and concealment of facts and as such the appellant is not entitled to any relief.
- G. That appeal is filed malafidely just to acquire rights of invalid pension as the employee retired on medical board children has 100% quota for appointment.
- H. That as per amended rules the employee after completion of 20 / 25 year of service or attaining age of 55 years could choose retirement and this will be considered pre-mature retirement but could not be given or converted to invalid pension. **(Copy of KP civil servant amended act 2021 is Annexure-A)**
- I. That no departmental appeal was preferred within specified period nor has this appeal been filed within the prescribed period, hence instant appeal being time barred is liable to be dismissed.

REPLY ON FACTS:

1. Para No.1 is correct to the extent of appointment of appellant on disable quota.

2. That Para No. 2 is correct to the extent of application for retirement. But as the appellant already completed the 25 years of service and was more than 55 years of age, therefore as per KP civil servant amended act 2021, he could not be retired on medical ground. Moreover, no valid ground and type of disease / illness was shown in application, on which the appellant could be retired.
3. That Para No.3 is incorrect. Eyesight weakness was not mention in application nor were the prescriptions reliable to be believed for the retirement of appellant on medical board. Moreover, Appellant preferred to submit application for pre mature retirement instead of filing appeal to the high ups for the redressal of his grievances.
4. That Para No.4 is incorrect. The appellant requested for retirement due to his domestic issues. The appellant miss-stated in the relevant para, hence not liable to any relief.
5. That Para No.5 is correct. The appellant was retired as per rules and policy.
6. That Para No.6. It is submitted that no such representation was filed before competent authority. Moreover, the appellant himself choose pre-mature retirement stating his domestic issues, hence he was not entitled for retirement on medical board.
7. That Para No.7. It is submitted that the application mentioned was neither a departmental appeal nor has been filed within time.
8. That the instant appeal is illegal and filed to pressurize department, therefore is liable to be dismissed.


REPLY ON GROUNDS:

- a) That Para-A is correct to the extent of appellant service in the department.
- b) That Para-B. The burden of proof was on appellant but no such detail or reliable evidence was given by the appellant for his retirement on medical board. The whole story is afterthought just to avail remedy of medical board quota.
- c) That Para-C. It is submitted that the appellant has not given any reliable evidence or documents in shape of prescriptions and

diagnose, whereupon he could be retired on medical board rather the appellant himself filed application for his retirement due to domestic issues. Hence his retirement could not be converted into invalid retirement. Moreover, due to policy change in 2021 the employee attaining 55 years or having service for more than 25 years could seed pre-mature retirement hence department correctly retired the appellant as per rules.

- d) That Para-D. It is submitted that the appellant himself seek retirement due to domestic issues. Moreover, the appellant has no legal right to claim to be retired on medical board.
- e) That Para-E. It is submitted that the appellant was retired as per rules and policy. The appellant has no right to claim retirement on medical board after serving for more than 25 years.
- f) That Para-F is incorrect. The appellant has not mentioned the reason of weakness of his eyesight. Moreover, no valid reason was mentioned by the appellant in his application hence the appellant was retired as per rules and policy.
- g) That Para-G. It is submitted that the appellant was not entitled to be retired on medical ground.
- h) That Para-H is incorrect. No malafide is involved on the par of respondents. The appellant was not entitled to be retired on medical ground.
- i) That the counsel of the respondents may please be allowed to raise further points at the time of the arguments.

It is, therefore, most respectfully prayed that the appeal of the appellant may kindly be dismissed with special compensatory costs coupled with expenses of litigation.


Samina Altaf

Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.
(R.No.2)


Muhammad Ilyas

District Education Officer
(M) Lakki Marwat
(R.No.1)

AFFIDAVIT

I, Muhammad Ilyas District Education Officer Male Lakki Marwat, do hereby solemnly affirm and declare upon oath that the contents of the accompanied written reply are true and correct to the best of my knowledge and belief and nothing has been intentionally concealed from this Hon'ble Tribunal. It is further added on oath that in this appeal the answering respondent have neither been placed ex-parte nor their defense have been struck off/*cost*.

Deponent



Muhammad Ilyas
District Education Officer (M)
Lakki Marwat





KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 18th MAY, 2021.

PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 18th May, 2021.

No. PA/Khyber Pakhtunkhwa/Bills-150/2021/7705.— The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill, 2021 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 20th April, 2021 and assented to by the Governor of the Khyber Pakhtunkhwa on 30th April, 2021 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ACT, 2021. (KHYBER PAKHTUNKHWA ACT NO. XI OF 2021)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 18th May, 2021).

AN ACT

further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) in the manner hereafter appearing:

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. **Short title and commencement.**— (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2021.

(2) It shall come into force from 31st July, 2019.

2. **Substitution of section 13 of the Khyber Pakhtunkhwa Act No. XVIII of 1973.** — In the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), hereinafter referred to as the said Act, for section 13, the following shall be substituted, namely:

Attested

13. **Retirement from service.**--- (1) A Civil Servant shall retire from service on the completion of sixtieth (60th) year of his age.

(2) A Civil Servant may opt to retire early from service, after completion of twenty five (25) years of qualifying service or attaining the age of fifty five (55) years, whichever is later.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the competent authority may in the public interest, direct that a Civil Servant may retire from service, from such date, as may be determined by the competent authority, after he has completed twenty (20) years of service, qualifying for pension or other retirement benefits, in the manner as may be prescribed:

Provided that no direction under this sub-section shall be made until the Civil Servant has been informed in writing of the grounds on which it is proposed to make the direction, and has been given a reasonable opportunity of showing cause against the said direction.

Explanation.- In this section, the expression "competent authority" means the appointing authority prescribed in rule 4 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989."

3. **Insertion of section 13A of the Khyber Pakhtunkhwa Act No. XVIII of 1973.** --- In the said Act, after section 13, as so substituted, the following new section shall be inserted, namely:

"13A. **Protection of certain acts.**--- (1) All the Civil Servants, who were conditionally retired from service on or after 31st day of July, 2019 shall, for all intents and purposes, be deemed to have been regularly retired from service on the date of attaining sixtieth (60th) years of age.

(2) Any Civil Servant, who has completed sixty (60) years of age but is not retired from service, by virtue of or in pursuance of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019, shall be deemed to have been retired from service from the date when such Civil Servant has completed sixty (60) years of age.

(3) Any salary, allowances and other ancillary benefits received or drawn by such Civil Servant under this section on or after 31st day of July, 2019 shall be deemed to be validly received and drawn."

4. **Repeal.**--- The Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance, 2021 (Khyber Pakhtunkhwa Ordinance, No. II of 2021), is hereby repealed.

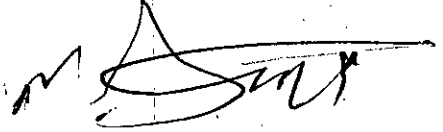
BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

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AUTHORITY

Mr. Kashif Munir Litigation Officer O/O the District Education Officer (Male) Lakki Marwat is hereby authorized to Submit Reply in Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in S.A 1060/2023 Titled Mir Sada khan Versus Government of Khyber Pakhtunkhwa on behalf of the undersigned.



District Education Officer (M)
Lakki Marwat