

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT D.I KHAN

Service Appeal No.16447/2020

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

Shah Alam Khan S/O Muhammad Alam Khan Gandapur R/o Mohallah
Sheikhanwala Sabirabad, Tehsil & District Tank, Ex: Sub Accountant, DAO
SWTD, District Tank.

.... (Appellant)

VERSUS

1. The Government of KPK through Secretary Finance Department,
Peshawar.
2. The Director Treasury & Accounts, Finance Department, Peshawar.
3. Deputy Secretary Service Regulation Finance Department, Peshawar.
4. The District Accounts Officer/District Comptroller of Accounts, South
Waziristan, Tribal District, Tank.

.... (Respondents)

Mr. Damsaz Khan Gandapur
Advocate

.... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....15.12.2020
Date of Hearing.....21.02.2024
Date of Decision.....21.02.2024

JUDGMENT

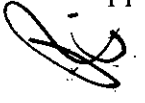
RASHIDA BANO, MEMBER (J):The instant service appeal has been
instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act
1974 with the prayer copied as below:

“On acceptance on instant service appeal the impugned
office order No.FD(SOSR-1)12-5/2020(33376) Dated
Peshawar the 01-07-2020 sent to the appellant on dated 15-
07-2020 vide Office Order No.SO(ESTT-1)FD/19-
1/2017/Budget/Vol-1/S.Alam, received by the appellant on



25-08-2021 may graciously be set aside issued by respondent No.2 and also against the appellate authority order (if any) Qua departmental appeal dated 02-09-2020, which was not decided within stipulated period meaning thereby rejection of departmental appeal, the respondents may graciously grant of pay fixation i.e. pay protection of the last drawn pay of previous services of the appellant in Afghan refugees on 22-09-1993 on the basis of re-employment in to fresh services District Account Officer Tank i.e.21-08-1995, while fully explaining are that the pay which has been last drawn in afghan refugees BPS-11 as Assistant on 22-09-1993 to be fixed/protected in the fresh office after reemployment on 21-08-1995 and further including back benefits may also be granted to the appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was firstly appointed as Senior Clerk vide order dated 18.12.1980 in the incumbency of Agency Administrative Afghan Refugees South Waziristan Wana. He was transferred to D.I Khan on 01.09.1984. Then he was promoted to the post of Assistant vide order dated 19.04.1982 in the office of the District Administrator Afghan Refugees. Later on services of the appellant in Afghan Refugee retrenched due to abolition of post and granted leave encashment for 355f days. Thereafter, he was appointed as Sub Accountant in the Treasury Establishment vide Commissioner D.I Khan Division dated 22.08.1995. Appellant was asked to deposit the retirement benefits already drawn in the year 2013, which was deposited by him. During appointment of the appellant in the District Account Office, Tank on 22.08.1995 and during pendency of services the appellant submitted an application for pay protection in the District Account Office, Tank which was not consider by respondent. Feeling aggrieved, he filed departmental appeal which was not responded, hence the present 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 argued that the impugned order dated 01.07.2020 as well as the appellate order is against the law facts and circumstance of the case. He further argued that refusal of pay fixation and protection due to previous service is also against the service rules and policy and principle of natural justice and is not in accordance of the establishment court and as per FR-22 R/W CST 418 etc. He further argued that refusal of the pay protection is offending against the beneficial item No. III of Fundamental Rule 22-B read with various Civil Service Regulations, when the appellant has paid the committed values of the pension vide Treasury Challan No.1 dated 30.10.2014 duly acknowledge and acted upon by the competent authority.

5. Conversely, learned Deputy District Attorney contended that respondents have acted according to the prevailing rules and policy. All the benefits of service rendered in Afghan Refugees Organization (Federal Government) had already been received and granted vide Pension Payment order No. C/346-DIK w.e.f. 1992 to date and no such benefits are admissible even in natural justice. He further argued that no such pay protection facilities are applicable to the appellant, because he rendered service under the Afghan Refugees Organization and he received the benefits of compensation pension/gratuity and he is regularly drawn his pension /gratuity in lieu of said period separately and had not held the said pension in abeyance till now. He further contended that appellant clearly violated the Appeal Rules, 1986 as he could not claimed the benefits, if admissible,



within prescribed time limit, so as the present appeal is not on merit nor in period of limitation.

6. Perusal of record reveals that appellant was initially appointed as Senior Clerk BPS-6 on 18.12.1980 in Afghan Refugees South Waziristan Wana, who was then was promoted to the post of Assistant BPS-11 vide order dated 19.04.1982 and was then transferred to D.I.Khan on 1.09.1984. Appellant got retired from service of Afghan Refugees Rehabilitation Commission on 21.09.1993. Appellant was again appointed as Sub Accountant in BPS-11 in the office of Commissioner D.I.Khan vide order 22.08.1995. Appellant upon his appointment applied for pay protection by taking shelter of FR-22 R/W CSR 418 and notification dated 3rd July 2000 of the Government of Pakistan. Admittedly all employees of the Afghan Commissionarate were declare temporary civil servant for all purposes who served for there for continuous ten years provided they were recruited against temporary sanctioned posts., prior to 24.02.1991 and have been drawing pay/salaries from government exchequer through AGPR irrespective of the fact that they have been recruited on temporary or contract basis and they would be entitled to compensatory pensionary benefits or refreshment benefits. As already allowed under SAFRON Divisions sanction letter dated 27.11.1994. Appellant was also given pensionary benefits at the time of his retirement from Afghan Commissionarate on 21.09.1993 in light of notification dated 03.07.2000.


"The initial substantive pay of a Government servant who is appointed substantively to a post on a time scale of pay is regulated as follows-

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended



- (i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post,
- (ii) when appointment to the new post does not involve such assumption he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time-pay scale of the new post is higher than his substantive of the old post, he will draw that minimum as initial pay;
- (iii) when appointment to the new post is made on his own request and under rule 15(a) and the maximum pay in the timescale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay."


7. Perusal of FR 22 reveals that it is basically about lien, which a civil servant hold upon post when he opted to go to the another post through proper channel. For invoking provision of FR-22 existence of service of the civil at the time of the applying and going to another service is must which is link/bridge to connect through which a civil servant can claim pay protection but in case of appellant said bridge/link was not in existence as he was not in service at time of his appointment as Sub Accountant in the office of commissioner D.I.Khan on 22.08.1995. Appellant alleged that he was reappointed but perusal of his appointment order dated 22.08.1995 reveals that he was freshly appointed and was not reappointed on the said post. Appellant contended that he was directed by Director Treasury and Accounts


 Khyber Pakhtunkhwa, Peshawar vide letter 11/8/2013 to refund

compensation gratuity under CSR 511 to 516 for revival of right to count previous service which accordingly deposited on 30.10.2013. In our humble view when at the time of his subsequent appointment he was not in service and he had no lien upon his earlier service post then order to refund gratuity amount is unwarranted, therefore, appellant can ask for repayment/refund of his gratuity amount deposited by him upon wrong direction of the Director Treasury, if so advised.

8. In view of the above discussion, the appeal in hand is dismissed having no force in it. Costs shall follow the event. Consign. .

9. *Prónounced at camp court in D.I Khan and given under our hands and seal of the Tribunal on this 21th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, D.I Khan


(RASHIDA BANO)
Member (J)
Camp Court, D.I Khan

ORDER

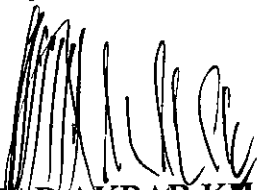
21.02.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali


Shah learned Deputy District Attorney for the respondents present..

2. Vide our detailed judgement of today placed on file, the appeal in hand is dismissed having no force in it. Costs shall follow the event.

Consign.

3. *Pronounced at camp court in D.I Khan and given under our hands and seal of the Tribunal on this 21th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, D.I Khan


(RASHIDA BANO)
Member (J)
Camp Court, D.I Khan