

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 252/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Shaheen Khan, (Retd) Senior Inspector of Mines (BPS-18), Mineral
Development Department, Peshawar. (Appellant)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Mineral Development
Department, Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa, Finance Department,
Peshawar.

.... (Respondents)

Mr. Taimur Ali Khan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....31.01.2023
Date of Hearing.....14.02.2024
Date of Decision.....14.02.2024

SCANNED
KPST
Peshawar

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been
instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act
1974 against the order dated 17.01.2023, whereby departmental appeal of the
appellant for pay protection alongwith arrears of his previous service rendered
as Assistant Mining Engineer BPS-17 in PMDC w.e.f 24.07.1984 to
17.01.1995 from the date of his appointment as Inspector of Mines BPS-17 in
the Inspectorate of Mines, Labor Welfare Khyber Pakhtunkhwa has been



rejected for no good reason with the prayer that on acceptance of this appeal, the impugned order 17.01.2023 may graciously be set aside being illegal and passed in violation of this Hon'ble Tribunal judgments as well as supreme court judgments 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 24.07.1984 to 17.01.1995 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'ble 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 24.07.1984. 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 17.01.1995 and assumed the charge of the post of Inspector Mines on 18.01.1995. Appellant taking precedent from case of Mian Farooq Iqbal and Mumtaz Khan of the same department requested the respondents for pay protection of his previous service and challenged it under the Finance Department notification dated 04.06.2011. Appellant filed departmental appeal on 14.07.2020 and after inter departmental correspondence between the Administration Department, Finance Department and Law Department the request of appellant was regretted vide order dated 17.01.2023, 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 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 PMDC w.e.f 24.07.1984 to 17.01.1995 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 Department letter dated 04.06.2011 was fulfilled by the appellant before joining the Government Service. Appellant is entitled for pay protection on appointment from 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 notification, therefore, he is not entitled for pay protection. He 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 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 16.01.1995. 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 Mian Farooq Iqbal. It will not be out of place to mention here that this Tribunal vide judgment/order dated 16.11.2023 in the case of Mr. Fazli Raziq had already advised the Chief Secretary, Khyber Pakhtunkhwa in these terms. 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 was resorted for unknown reasons, deriving the appellant from pillar to post. The laid down principle of consistency enunciated in 1996 SCMR 1185 is relevant and quite apt to be reproduced;

“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 preceded the case of Mian Farooq 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 in light of the Finance Department's circular letter No. FD (SR-I)12-1/2011 dated 04.06.2011" ignoring the fact that being a financial matter it fell in its ambit of functions under the Rules of Business (1985) and it had already exercised that authority when it issued Notification dated 15.06.2020 in respect of Mian Farooq Iqbal. It will not be out of place to mention here that this Tribunal vide judgment dated 14.11.2023 in case of Mr. Fazli Raziq had advised the Chief Secretary Khyber Pakhtunkhwa in these terms:


"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 but despite clear direction plea of the appellant was turned down".

8. As a sequel to the proceeding 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 is therefore entitled for the benefits of pay protection of previous service rendered under PMDC w.e.f 24.07.1984 to 17.01.1995. The service appeal is therefore, allowed as prayed for and the impugned order dated 17.01.2023 is set aside. Copy of 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 14th day of February, 2024.*

SCANNED
KPST
PESHAWAR


(FARZEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


*Kaleemullah

22.11.2023

Clerk of learned counsel for the appellant present.
Mr. Imran Shah, Assistant alongwith Mr. Muhammad Jan,
District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for
adjournment on the ground that learned counsel for the
appellant is not available today due to strike of lawyers.
Adjourned. To come up for arguments on 14.02.2024 before
the D.B. Parcha Peshi given to the parties.

SCANNED
K.P.S.T
PESHAWAR


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

Naeem Amin

ORDER

14.02.2024 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, we allow
the appeal of the appellant 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 14th day of February, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah

SCANNED
K.P.S.T
PESHAWAR