

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7555/2021

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

Mr. Abdul Tahir, (Rtd) Associate Professor (BPS-19), Technical Education, Khyber Pakhtunkhwa, Peshawar. .... (*Appellant*)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Industries, Commerce & Technical Education Department, Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
4. The Managing Director, KP-TEVTA Khyber Pakhtunkhwa, Peshawar. .... (*Respondents*)

Mr. Taimur Ali Khan  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

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Date of Institution.....28.09.2021  
Date of Hearing.....26.03.2024  
Date of Decision.....26.03.2024

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 03.05.2021 communicated to the appellant for pay protection alongwith arrears of his previous service rendered as Assistant Mining Engineer BPS-17 in PMDC w.e.f 26.08.1982 to 09.02.1992 from the date of his appointment as Principal BPS-18 in the Vocational Institute of Technical Education has been rejected without giving any reason with the prayer that on acceptance of this appeal, the order 03.05.2021 may kindly be set aside and the respondents may further be directed to grant pay protection



alongwith arrears of his previous service render as Assistant Mining Engineer (BPS-17) in PMDC w.e.f 26.08.1982 to 09.03.1992 from the date of his appointment as Principal (BPS-18) in vocational institute of technical education as already granted by this Hon'ble Tribunal in same nature appeal No. 376/2014 titled Mian Farooq Iqbal Vs. Chief Secretary of Khyber Pakhtunkhwa and other remedy which this august Tribunal deem fit and appropriate that may also be awarded in favour of appellant.

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) vide order dated 12.08.1982 and assumed the charge on 26.08.1982. The post of Principal BPS-18 in the Vocational Institute and Technical Education was advertised through Public Service Commission and the appellant applied through proper channel for the said post and was appointed as Principal (BPS-18) vide notification dated 03.03.1992. He was relieved from post of Assistant Mining Engineer on 09.03.1992 and assumed the charge of the post of Principal on 10.03.1992. Appellant taking precedent from case of Mian Farooq Iqbal 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 10.02.2020 and after inter departmental correspondence between the Administration Department, Finance Department and Law Department the request of appellant was rejected vide order dated 03.05.2021, 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 26.08.1982 to 09.03.1992 who applied to the post of Principal (BS-18) in KP-TEVTA 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 Principal. 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 Principal (BS-18) in 1991 through proper channel and on appointment, he was properly relieved by PMDC on 09.03.1992. 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 precedented 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. Therefore, appellant is entitled for the benefits of pay protection of previous service rendered under PMDC w.e.f. 26.08.1982 to 09.03.1992. 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 26<sup>th</sup> day of March, 2023.*

  
(FAREEHA PAUL)  
Member (E)


  
(RASHIDA BANO)  
Member (J)


04.12.2023

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for respondents No. 1 to 3 present. Mr. Shahab Khattak, Legal Consultant for respondent No. 4 also present.

Learned counsel for the appellant requested for some time for preparation of arguments. Adjourned. To come up for arguments on 26.03.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar

  
(Farccha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

\*Naeem Amin\*

**ORDER**  
26.03.2024

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 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 Ape Court. Therefore, appellant is entitled for the benefits of pay protection of previous service rendered under PMDC w.e.f. 26.08.1982 to 09.03.1992. 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 26<sup>th</sup> day of March, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah

08.02.2023

Appellant present in person. Mr. Muhammad Adeel Butt,

Additional Advocate General for the respondents present.


Mrs. Rozina Rehman, Learned Member (J) is on leave today, therefore, case is adjourned to 15.05.2023 for arguments before the D.B.

SCANNED  
KPST  
Peshawar

  
(FAREEHA PAUL)  
Member (E)

15-5-2023

Due to rush of work to come up  
for the same on - 7-8-2023

  
Amjad

7<sup>th</sup> August, 2023 1. Junior to counsel for the appellant present. Mr. Fazal Shah Mohmand learned Additional Advocate General for the respondents present.

2. Junior to counsel for the appellant requested for adjournment on the ground that senior counsel is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 04.12.2023 before the D.B. P.P given to the parties.

SCANNED  
KPST  
Peshawar

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)