

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

12(2) Application No. 754/2022 in S.A No.5200/2021

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

1. Asmat Ullah, Assistant
2. Sami Ullah, Assistant
3. Muhammad Iqbal, Assistant
4. Haji Zardad Khan, Assistant/Civil Nazir, District Judiciary, Lakki Marwat. (Petitioner)

VERSUS

1. Tariq Saleem, Assistant
Anti-Terrorism Court, Bannu.
2. The District & Session Judge, Lakki Marwat
3. The Registrar,
Peshawar High Court, Peshawar.
4. The Special Judge,
Anti-Terrorism Court, Bannu.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate ... For petitioners

Mr. Shahid Saleem Mina Khel
Advocate For Respondent No.1

Mr. Muhammad Jan
District Attorney ... For Respondents No.2 to 4

Date of Institution.....23.12.2022

Date of Hearing.....01.03.2024

Date of Decision.....01.03.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant petition is filed under section 12(2) CPC 1908 against the judgment dated 25.11.2022 passed in Service Appeal No.5200/2021 being procured by respondent on the basis of misrepresentation.

2. Perusal of record reveals that petitioner filed instant petition under section 12(2) Code of Civil Procedure 1908 by challenging

judgment and order passed by this Tribunal in Service Appeal No.5200/2021 titled "Tariq Saleem Vs. Registrar Peshawar High Court" announced on 25/11/2022 on the ground of being obtained by misrepresentation and concealment of facts. Respondent No.1 (appellant) filed the said appeal with the prayer that the impugned office order dated 08/01/2021 and appellate order dated 21/05/2021, might be set aside being illegal, unlawful, against the rules/regulation and against the rights of the appellant and that he might be given the due right in the District Court Lakki Marwat. History and reason behind filing appeal No.5200/2021 by the respondent was that he was appointed as Senior Clerk/Reader (BPS-11) in the Establishment of Anti-Terrorism Court Bannu vide order dated 09/04/2003. After his appointment in ATC Bannu, he submitted an application to Registrar Peshawar High Court on the ground that he had enmity in the village due to which he could not travel daily from Lakki Marwat to Bannu, therefore, he be transferred/adjusted against a newly created post of Assistant in the Establishment of District Judge, Lakki Marwat. His application was accepted and accordingly he was transferred to District Court, Lakki Marwat vide order dated 21/04/2003 and was later on permanently absorbed there as his name was entered at the bottom of the seniority list maintained at District Court Lakki Marwat. He was regularly receiving salary from District Court Lakki Marwat against the newly created vacant post since his transfer which meant that he was permanently absorbed in the District Court Lakki Marwat and was no more an employee of ATC Bannu. His name was struck from the seniority list maintained by ATC Bannu. His transfer order to District Court of Lakki Marwat was withdrawn by the Registrar,

Peshawar High Court vide order dated 08/01/2021 and he was transferred back to his parent department i.e. Establishment of Anti-Terrorism Court, Bannu. He filed departmental representation, which was rejected on 21/05/2021. Service appeal of the respondent No.1 was allowed by this Tribunal on 25/11/2022 by holding that;

“As regards the question of transfer and absorption of the appellant, this bench is of the view that when the appellant was transferred to Lakki Marwat and the District & Sessions Judge started maintaining his seniority in that office, and no objection was raised at that time, it is construed that the appellant has been absorbed in the office of District & Sessions Judge, Lakki Marwat. The action of transfer of the appellant to ATC Bannu, by the Registrar, Peshawar High Court at a belated stage, when 17 years had passed, is not maintainable.”

3. Now petitioner (Asmatullah) filled this petition on two grounds; one, for want of jurisdiction and second, that it was not in accordance with rules. The post of Assistant could not be filled by transfer rather and it could be filled either by promotion or by direct recruitment. Petitioner contended that respondent No.1 was appointed in the Establishment of Judge Anti-Terrorism Court, Bannu where was a Federal entity and appellant was on the strength of Federal Government and could not bring his grievance to Provincial Service Tribunal where only that civil servant could file appeal, as defined in Section-2 (b) of Khyber Pakhtunkhwa Civil Servant Act, 1973, which is reproduced as follows:-

“a civil servant means a person who is a member of a civil service of the province, or who holds a civil post in connection with the affairs of the province.”

This objection has no force in it as the Anti-Terrorism Courts were established under Section 13 of the Anti-Terrorism Courts Act 1997 which reads as follows:

“Establishment of Anti-Terrorism Courts wc.333;-(1) For the purpose of providing for the speedy trial of the cases under this act and of scheduled offences, the Federal Government, or if so directed by the Government, the Provincial Government may establish by notification one or more Anti-Terrorism Courts in relation to each territorial area as specified by the High Court concerned.

The Government of Khyber Pakhtunkhwa has enacted Anti-Terrorism Courts Staff Recruitment Rules, 2020 which laid down the method of recruitment, qualification and other conditions of Service in pursuance of the provisions contained in Sub Rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The Peshawar High Court Peshawar has incorporated the afore-said Staff Recruitment Rules of Anti-Terrorism Courts in Judicial Esta Code as well. Moreover, all the Judges of Anti-Terrorism Courts have been made as Appointing Authority from the Posts of BPS-1 to BPS-16 by the Peshawar High Court Peshawar vide Notification dated: 26/01/2010.”

From the above provision of the ATC Act and ATC staff recruitments rules 2020, it is clear that respondent No.1 had to be dealt under laws, rules and regulations of the Provincial Government of Khyber Pakhtunkhwa and therefore he comes within the definition of civil servant.


4. It is also pertinent to mention here that petitioner No.4, in his departmental representation for his promotion to the post of Assistant, admitted seniority position of the respondent and his appointment by transfer as direct appointment, which fact is also mentioned in the

Judgment of Peshawar High Court dated 23.09.2021, therefore, now he (petitioner No.4) is estopped by his own conduct to challenge the seniority of the respondent. Moreover, all the petitioners did not object to the seniority list maintained by District and Session Judge, Lakki Marwat since 2005 till institution of instant 12(2) Petition and on this score too, they are estopped to challenge it.

5. The present petitioners kept mum for a long period of time which means that they accepted the seniority position of the appellant and now they are estopped by their own conduct to file the instant petition. It is also pertinent to mention here that judgment and order passed by this tribunal dated 25/11/2022 was acted upon and same was implemented on 14/02/2023 and no CPLA was filed by the department. Similarly, post of Assistant at ATC Bannu was filled by the judge ATC Bannu and there is no vacant post of Assistant in his establishment.

6. For what has been discussed above, we see no merit in this petition. It lacks all the three ingredients necessary for filing 12 (2) petition i.e. misrepresentation, concealment of facts, fraud and want of jurisdiction, hence dismissed. Costs shall follow the event. Consign.

7. *Pronounced in open Court in Peshawar and given under our hands and seal of the Tribunal on this 1st day of March, 2024.*



(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER

01.03.2024

1. Learned counsel for the petitioners present. Learned counsel for respondent No.1 alongwith Mr. Muhammad Jan learned District Attorney for respondents No.2 to 4 present.
2. Vide our detailed judgment of today placed on file, we see no merit in this petition. It lacks all the three ingredients necessary for filing 12 (2) petition i.e. misrepresentation, concealment of facts, fraud and want of jurisdiction, hence dismissed. 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 1st day of March, 2024.*



(FAREEHA PAUL)
Member (E)



(RASHIDA BANO)
Member (J)

*M.Khan

