

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO: 1150/2014

Date of institution ... 16.09.2014

Date of judgment ... 24.05.2016

Muhammad Taufique, PMS Officer (BS-17),
Government of Khyber Pakhtunkhwa, presently posted as
Section Officer at Chief Minister's Secretariat Khyber Pakhtunkhwa.

... (Appellant)

VERSUS

1. The Chief Minister, Khyber Pakhtunkhwa, through Chief Secretary,
Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa, through Chief Secretary,
Civil Secretariat Peshawar.
3. Secretary to the Government of Khyber Pakhtunkhwa,
Establishment Department Civil Secretariat Peshawar.
4. Secretary to the Government of Khyber Pakhtunkhwa,
Finance Department Civil Secretariat Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED/LETTER DATED 19.08.2014 OF RESPONDENT NO. 1 VIDE WHICH APPLICATION OF APPLICANT DATED 09.05.2014 REGARDING PROTECTION OF PAY/FIXATION FOR THE SERVICE RENDERED IN HAZARA UNIVERSITY IN CAPACITY OF ASSISTANT REGISTRAR/ASSISTANT CONTROLLER (BPS-17) ON SUBSEQUENT/THOUGH PROPER CHANNEL APPOINTMENT AS PMS (BPS-17) OFFICER UNDER GOVERNMENT OF KHYBER PAKHTUNKHWA HAS BEEN REGRETTED.

Mr. Muhammad Taufique
Mr. Ziaullah, Government Pleader

... Appellant in person.
... For respondents.

MR. AHMED HASSAN KHAN
MR. PIR BAKHSH SHAH

... MEMBER (EXECUTIVE)
... MEMBER (JUDICIAL)

JUDGMENT

AHMED HASSAN KHAN, MEMBER:-

According to appellant Mr. Muhammad

Taufique, he was appointed as Section Officer (PMS) on 05.05.2010 by the Provincial Government. That prior to his appointment, he was serving as Assistant Controller Examination (BPS-17) Hazara University Mansehra since 20.07.2007. He has sought following relief:-

“that on acceptance of this appeal, the appellant may please be allowed Protection of Pay and respondents be directed for fixation of his pay at the relevant stage for the service rendered in Hazara University as Assistant Registrar/Assistant Controller (BS-17) on his subsequent/through proper channel appointment as PMS Officer under Government of Khyber Pakhtunkhwa and further the respondent be directed to pay arrears since fixation to date as well”.

2. As he has applied for the above post through proper channel and as his previous organization has adopted scheme of the Basic Pay Scale in to-to, therefore, according to Finance Department letter No. FD (SR-1) 12-1/2011 dated 04.06.2011 he was entitled for pay protection.

3. As the appellant pay was not fixed in the light of the above notification so he was submitted departmental appeal/representation to the Chief Secretary of Chief Minister Khyber Pakhtunkhwa but the same were regretted, hence this appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

4. Arguments heard and record perused.

5. The appellant appeared in person and argued his case. His main reliance was on the Finance Department Notification dated 04.06.2011 and Fundamental Rules FR 22-b. He also submitted that Hazara University has the scheme of the Basic Pay Scales for its employees and that he had applied for PMS through proper channel.

6. The Government Pleader replied that FR 22-b was not applicable in this case and that the same is applicable to regular Government Servants who are holders of substantive post. Moreover the words “hence forth “used in the Finance Department above referred letter shows that the same is prospective and does not cover the appellant.

7. Admittedly, the appellant was a contract employee of the Hazara University. The respondent-department has pleaded that the benefits is admissible for regular employees only and appellant does not fulfill the criteria in the light of the Finance Department Notifications dated 24.08.1995 and 23.12.1984.



8. In the view of this Tribunal, it is not 22 (a) F.R & S.R but the government letter (amended) dated 04.06.2011 which may be applied to the subject ~~under~~ discussion. We have carefully perused this letter and are unable to hold that this letter is equally efficacious both for regular and contract employees. The letter rather provides to be prospective, hence the same cannot be made applicable to

case of the appellant. In the light of the fore-going discussion this Tribunal does not find any substance in the appeal and the same is dismissed. Parties are, however, left to bear their own costs.

File be consigned to the record room.

ANNOUNCED

24.05.2016



(PIR BAKHSH SHAH)
Member

(AHMED HASSAN KHAN)
Member

24.05.2016

Appellant in person and Mr. Ziaullah, Government Pleader for respondents present. Arguments heard and record perused. Vide our detailed judgment of today placed on file, this appeal is dismissed. Parties are, however, left to bear their own costs. File be consigned to the record room

ANNOUNCED

24.05.2016

Member

Member

5 31.03.2015

Appellant in person and Mr. Sultan Shah, Assistant alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply on 24.6.2015 before S.B.

6 24.06.2015

Appellant in person and Mr. Sultan Shah, Assistant alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 22.9.2015 before S.B.


Chairman

7 22.09.2015


Appellant in person, M/S Sultan Shah, Assistant and Irshad Muhammad, SO alongwith Addl: A.G for respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 22.12.2015.


Chairman

22.12.2015

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder submitted. To come up for arguments on 24-5-2016


Member


Member


Appeal No. 1180/2014
Mr. Muhammad Tufique

3, 13.10.2014


Appellant in person present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has prayed for protection of pay/fixation for the service rendered in Hazara University in capacity of Assistant Registrar/Assistant Controller (BPS17) on subsequent/through proper channel appointment AS PMS (17) Officer under Government of Khyber Pakhtunkhwa against which the appellant filed departmental appeal on 19.05.2014 which was rejected vide order dated 19.07.2014, hence the instant appeal on 16.09.2014.

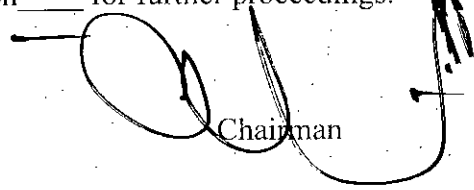
Appellant Deposited
Security & Process Fee
Rs. 350/- Bank
Receipt is Attached with File.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 17.12.2014.


Member

4, 13.10.2014

This case be put before the Final Bench  for further proceedings.


Chairman

17.12.14

The Tribunal is incomplete
Respectively case is adjourned to

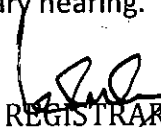
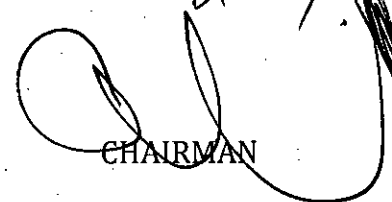
31-3-15


Reed

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1150/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16/09/2014	<p>The appeal of Mr. Muhammad Taufique presented today by him may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p> REGISTRAR</p>
2	19-9-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-10-2014</u></p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 1150 of 2014

Muhammad Taufique, PMS Officer (BS-17), Government of Khyber Pakhtunkhwa, presently posted as Section Officer at Chief Minister's Secretariat Khyber Pakhtunkhwa.

..... **APPELLANT**

VERSES

Chief Minister, Khyber Pakhtunkhwa, through Chief Secretary Civil Secretariat, Peshawar and others

..... **RESPONDENTS**

APPEAL
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4.	Copy of LPC issued by Hazara University.	10	C
5.	Copy of 1 st Salary Slip as PMS Officer	11	D
6.	Copy of Govt. of Khyber Pakhtunkhwa Finance Department policy letter dated 04-06-2011	12	E
7.	Copy of Govt. of Khyber Pakhtunkhwa Finance Department letter dated 26-12-2012	13	F
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APPELLANT

Dated 16 /09/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
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. . . . APPELLANT

VERSES

1. Chief Minister, Khyber Pakhtunkhwa, through Chief Secretary
Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat Peshawar,
3. Secretary to the Government of Khyber Pakhtunkhwa,
Establishment Department Civil Secretariat Peshawar,
4. Secretary to the Government of Khyber Pakhtunkhwa,
Finance Department, Civil Secretariat Peshawar,

. . . . RESPONDENTS

APPEAL UNDER SECTION-4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER/LETTER DATED 19-08-2014 OF
RESPONDENT NO.1 VIDE WHICH APPLICATION OF
APPLICANT DATED 09-05-2014 REGARDING
PROTECTION OF PAY/FIXATION FOR THE SERVICE
RENDERED IN HAZARA UNIVERSITY IN CAPACITY OF
ASSISTANT REGISTRAR/ASSISTANT CONTROLLER
(BS-17) ON SUBSEQUENT/THROUGH PROPER
CHANNEL APPOINTMENT AS PMS (BS-17) OFFICER
UNDER GOVERNMENT OF KHYBER PAKHTUNKHWA
HAS BEEN REGRETTEED.

16/9/14

Prayer in Appeal.

ON ACCEPTANCE OF THIS APPEAL, THE APPELLANT MAY PLEASE BE ALLOWED PROTECTION OF PAY AND RESPONDENTS BE DIRECTED FOR FIXATION OF HIS PAY AT THE RELEVANT STAGE FOR THE SERVICE RENDERED IN HAZARA UNIVERSITY AS ASSISTANT REGISTRAR/ASSISTANT CONTROLLER (BS-17) ON HIS SUBSEQUENT/THROUGH PROPER CHANNEL APPOINTMENT AS PMS OFFICER UNDER GOVERNMENT OF KHYBER PAKHTUNKHWA AND FURTHER THE RESPONDENTS BE DIRECTED TO PAY ARREARS SINCE FIXATION TO DATE AS WELL.

Respectfully Sheweth.

The appellant submits as under:-

FACTS.

1. That the appellant is an officer of Provincial Management Service, (PMS-BS-17), appointed/recruited through Public Service Commission in the year 2010 through competitive examination and presently posted as Section Officer in Chief Minister's Secretariat Khyber Pakhtunkhwa.
2. That before joining/appointment as PMS Officer, the appellant was serving as Assistant Registrar/Assistant Controller (BS-17) at Hazara University Mansehra.
3. That the appellant applied for PMS through proper channel (**Annex "A"**).
4. On selection, the appellant was properly relieved by Hazara University to join as PMS Officer, Government of Khyber Pakhtunkhwa (**Annex "B"**).
5. That LPC was also issued indicating therein basic salary of the appellant amounting to Rs. 11330/- (**Annex "C"**).
6. That the Government of Khyber Pakhtunkhwa did not fix the pay of appellant at its relevant stage and allowed him fresh basic salary of BS-17 amounting to Rs. 9850/- (**copy of first pay clip at Annex "D"**).

7. That as per Government of Khyber Pakhtunkhwa Finance Department policy letter No. FD (SR-I) 12-01/2011 dated 04-06-2011 pay protection is admissible to the employees of autonomous organizations on their appointment in Government Offices. **(Annex "E" and relevant portion is reproduced as under):-**

"... The benefit of pay protection will be admissible to employees of such autonomous organization who have adopted scheme of basic pay scales in to-to on their appointment in Government offices, provided they have applied for the post through proper channel".

8. That Finance Department in their further letter dated 26-12-2012 clarified their policy letter dated 04-06-2011 in the following terms **(Annex "F" and relevant portion is reproduce as under):-**

"... In light of Finance Department circular letter No. FD(SR-I)12-1/2012 dated 4th June, 2011 pay protection is admissible to the officer concerned subject to the following condition:-

- i. The original Organization of the officer has adopted the scheme of basic pay scale in to-to
- ii. The Officer has applied to his present job through proper channel.

9. That the appellant fulfills the required conditions as laid down in the policy in vogue for protection pay/fixation due to the fact:-

- a. That the appellant's organization has adopted schemes of basic pay in to-to **(Annex "G")**.
- b. He applied for PMS through proper channel **(Annex "A"-ibid.)**

10. That by reasons noted in Para 9 above the appellant fulfills both the conditions laid down in the Finance Department circular letter dated 04-06-2011 and its further clarification dated 26-12-2012, hence, is entitled for protection of pay/fixation.

11. That the appellant applied for protection of pay/fixation to Secretary Establishment, Chief Secretary, Khyber Pakhtunkhwa and also submitted an appeal to the Chief Secretary for review (**Annex H, I & J**) but was regretted (**Annex K, L & M**).
12. That the appellant also submitted to the Chief Minister for protection of pay/fixation but was regretted (**Annex N & O**).
13. That Establishment Department in two similar cases granted sanctions of pay protection to one Mr. Anwar ul Haq, PMS-BS-17 in terms of same Finance Department circular. Moreover one Mr. Amir Latif, PCS-BS-17 was also accorded counting of University Service (**Annex "P & Q"**).
14. That the appellant being aggrieved of the above noted reply/response of the respondents 1-4 having got no other efficacious/adequate remedy, now approaches this honorable Tribunal on the following grounds amongst the other:-

GROUND.

- A. That the response of respondents (**Annex K, L, M & O-ibid**) is unconstitutional, illegal, unlawful, malafide and discriminatory.
- B. That as per Government of Khyber Pakhtunkhwa Finance Department policy letter No. FD(SR-I) 12-1/2011 dated 04-06-2011 pay protection is admissible to the employees of autonomous on their appointment in Government Offices. (**Annex "E-ibid" and relevant portion is reproduced as under**):-

"... The benefit of pay protection will be admissible to employees of such autonomous organization who have adopted scheme of basic pay scales in to-to on their appointment in Government offices, provided they have applied for the post through proper channel".

- C. That Finance Department in their further letter dated 26-12-2012 clarified their policy letter dated 04-06-2011 in the following terms (**Annex "F-ibid"** and relevant portion is reproduced as under):-

"... In light of Finance Department circular letter No. FD(SR-I)12-1/2012 dated 4th June, 2011 pay protection is admissible to the officer concerned subject to the following condition:-

- i. The original Organization of the officer has adopted the scheme of basic pay scale in to-to
 - ii. The Officer has applied to his present job through proper channel.
- D. That the appellant fulfills the required conditions as laid down in policy in vogue for protection of pay/fixation by virtue of following:
- i. That the appellant's organization has adopted schemes of basic pay in to-to (Annex "G-ibid").
 - ii. He applied for PMS through proper channel (Annex "A-ibid").
- E. That two precedents exist wherein one Mr. Anwar-ul-Haq PMS (BS-17) and Mr. Amir Latif PCS (now PMS BS-17) were allowed protection of pay under same circumstances (**Annex "P & Q-ibid"**).

It is, therefore, respectfully prayed that on acceptance of instant appeal the appellant may be allowed protection of pay/fixation and the Respondents be directed:-

- I. To fix the salary of appellant on its relevant stage that was due on the date of joining of appellant as PMS Officer.
- II. Pay all arrears after fixation to date.
- III. Any other remedy to which appellant found entitled in the peculiar circumstances of the case, may also be granted.


(MUHAMMAD TAUFIQUE)
APPELLANT

Dated 16/09/2014

VERIFICATION

Verified that the contents of foregoing appeal are true and correct to the best of my knowledge and belief.


APPELLANT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. _____ of 2014

Muhammad Taufique, PMS Officer (BS-17), Government of Khyber Pakhtunkhwa, presently posted as Section Officer at Chief Minister's Secretariat Khyber Pakhtunkhwa.

. . . . APPELLANT

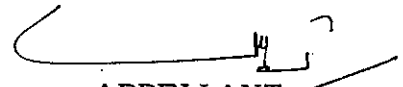
VERSES

Chief Minister, Khyber Pakhtunkhwa, through ~~Chief Secretary~~
~~Civil Secretariat Peshawar.~~

. . . . RESPONDENTS

AFFIDAVIT

I, Muhammad Taufique, PMS Officer (BS-17) Govt. of Khyber Pakhtunkhwa presently posted as Section Officer at Chief Minister's Secretariat Khyber Pakhtunkhwa, do hereby solemnly affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal


APPELLANT

CERTIFICATE

It is certified that no such appeal has been earlier filed by the appellant in this honorable Tribunal.


APPELLANT

Dated 16 /09/2014

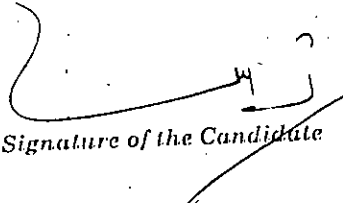
Application No. 41190

6

FORM 'D'

CERTIFICATE OF DEPARTMENTAL PERMISSION
TO BE COMPLETED BY THE CANDIDATE

- 1. Name Mr. Muhammad Taufique.
- 2. Father's Name Gulab Khan.
- 3. Post held Assistant Controller of Exams (Secrecy).
- 4. Office/Department Controller of Exams, Hazara University Mansehra.
- 5. Post applied for PMS officer BPS-17
- 6. Commission's advertisement No. 2/2008


Signature of the Candidate

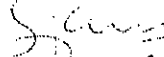
Place

Date

TO BE COMPLETED BY DEPARTMENT/OFFICE

- 7. The candidate is permitted to apply for the said post.
 - (a) He/She is employed in this Department/Office as Assistant Controller of Exams (CS) since 21-07-2007.
 - (b) He/she holds this post in permanent/temporary/adhoc capacity.
 - (c) His/her accepted domicile as per official record is of Dist, Haripur, N.W.F.P

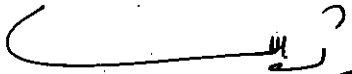
Signature


Name and Designation of the Officer
Acting Controller of Exams
Hazara University
Mansehra N.W.F.P

Place 19-10-2009
Place Hazara University
Mansehra.

To
Secretary,
N.W.F.P. Public Service Commission,
Peshawar.

Attested



GS&PD,NWFP,1447/14-Secy, PSC-25,000 Forms-13.7.2007/PIV(Z)F:PSC Form 'A' (New) SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar



HAZARA UNIVERSITY
GARDEN CAMPUS, MANSEHRA, NWFP
Phone No: 0997-414163 Fax No. 0997-530046
Email: huregistrar@yahoo.com

F. No. 4(2)-HU/Reg/2010/836

May 05 2010

OFFICE ORDER

Consequent upon the approval of the Competent Authority Mr. Muhammad Taufique, Assistant Controller of Examinations is hereby relieved off from his duties w.e.f 08-05-2010 (AN) to join his new assignment as notified by the Govt of Khaiber Pakhtunkhwa Establishment Department Vide No. SOE-II(ED)3(81)/2010 dated 05-05-2010.

Zubair ul
Deputy Registrar
(Establishment)
07105110

Copy to:

1. PS to Vice Chancellor
2. PA to Registrar
3. Treasurer
4. RAD (Audit)
5. Controller of Examinations
6. Salary Section
7. Official concerned
8. Personal File
9. Relevant Files

Zubair ul
Deputy Registrar
(Establishment)
07105110

Attested

[Signature]
SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

Establishment II, Office Order 2010



Hazara University
Garden Campus
Mansehra, N.W.F.P
Phone: 0997-414163, Fax: 0997-530046

LPC No. 894
Date: 17/05/2010

LAST PAY CERTIFICATE

LPC in respect of Mr. Muhammad Taufique, Assistant Registrar BPS-17 on Adhoc basis in the Examination Section Hazara
He has been paid upto 08.05.2010 afternoon at the following rates:

Salary	Amount
1 Basic Pay	11,330
2 House Rent	4,433
3 Conveyance Allowance	2,480
4 Medical Allowance	1,750
5 Unattractive Area Allowance	5,000
6 Adhoc/Special Relief 30%	
7 Adhoc Relief Allowance 15-20% (2009)	1,700
8 Dearness Allowance	
9 Headship Allowance	
10 Additional Charge Allowance	
11 Special Pay	
12 Integrated Allowance	
13 Special Additional Allowance	
14 PhD/Qualification Allowance	
15 Computer Allowance	
16 Senior Post Allowance	
17 Entertainment Allowance	
18 Orderly Allowance	
19 Others (P.O.L)	

Gross Pay: 26,693

Deduction	Amount
1 House Rent	
2 Water Charges	
3 Electricity Charges	
4 Generator Charges	
5 Phone Charges	
6 Staff Welfare Fund	113
7 GP Fund	
8 Income Tax	212
9 GP Fund Advance	
10 Vehicle Charges	
11 Bus Charges	
12 Group Insurance	245
13 Others	

Total Deduction: 570

Net Pay: 26,123

Attested

SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

(Zafar) 12/5/10
Pay Incharge
Hazara University
Mansehra

(Prof. Dr. Muqarab Shah)
Registrar
Hazara University
Mansehra



P. Sec: PAYMENT ADVISE 2010
PR4017 - SECTION OFFICER (AD
Min: Min Law, Just. & Right

Emp # 00517808 Ruckie
Name MUHAMMAD TAUFIQUE
Des. SENIOR CONSULTANT
NIC No 1330204465919
CPF Interest Free
CPS 17 Regular / Contract

NTN:
CPF #:
Old #:

DEPTT CODE PR4017 -

PAYS AND ALLOWANCES:		
0001-Basic Pay		9,850.00
1001-House Rent Allowance 45%		4,432.00
1820-Utility Allowance		985.00
1875-Special Allowance 20%		1,970.00
1909-Adhoc Relief-2009 (17-22)		1,477.00
5002-Adjustment House Rent		3,289.00
5858-Adj Special Allowance 20%		1,460.00
5884-Adj. Adhoc Relief-2009		1,096.00
5801-Adj Basic Pay		7,308.00
Gross Pay and Allowances		32,597.00
DEDUCTIONS:		
IT Payable	1,092.96 Deducted	100.00 TAX: (3609)
CPF Balance	2,498.00	Subrc: 1,249.00
3501-Renevolent Fund		75.00
3511-Addl Group Insurance		25.00
Total Deductions		1,449.00
NET AMOUNT PAYABLE		31,148.00

QUALIFYING SERVICE	D. O. B	LFP Quota:
YRS Months Days	01.04.1979	Payment through DDO.
Government Contribution To CPF	1,249.00	

GOVERNMENT CONTRIBUTION TO CPF 1,249.00

Attested

SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD (SR-1) 12-1/2011
 Dated Peshawar the: 4th June, 2011

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All District Coordination Officers in Khyber Pakhtunkhwa.
10. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
11. The Registrar, Peshawar High Court, Peshawar.
12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject:

FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No.FNo.4(2)R-II/1996-235/2010, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1921(R) CS/2005 in respect of *Mr. Sajjad Rashid* and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic pay scales in to-to on their appointment in government offices, provided they have applied for the post through proper channel.

(MASOOD KHAN)
 Deputy Secretary (Reg-II)

Endst:of even No. & date.

Copy forwarded for information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
2. Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. All District Comptrollers of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
5. Director, FMIU, Finance Department
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. P.S to Secretary Finance.
8. PA to Spl: Secretary Finance.

Attested

(KHURSHID ALAM)
 Section Officer (SR-I)

SECTION OFFICER-II
 CM Secretariat
 Khyber Pakhtunkhwa
 Peshawar

Fax: - 9214171

17



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

NO. FD (SOSR-1) 12-5/ 2012
Dated Peshawar the: 26-12-2012

To:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department,
Peshawar.

Attention: Section Officer (E-II)

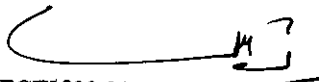
Subject: - APPLICATION FOR THE PROTECTION OF PAY / REGULARIZATION OF SERVICE.

Dear Sir,


I am directed to refer to your letter No.SO-II(ED) 4(190)/2012 dated 30-10-2012 on the subject noted above and to state that in light of Finance Department 's circular letter No.FD (SR-1) 12-1/2011 dated 4th June, 2011 pay protection is admissible to the officer concerned subject to the following conditions:-

- i) The original organization of the officer has adopted the scheme of basic pay scales in to-to.
- ii) The officer has applied to his present job through proper channel.

Attested


SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

Yours Faithfully,


(SHAUKAT ULLAH)
Section Officer (SR-1)

Handwritten notes:
26/12/12

The Chief Secretary,
Khyber Pakhtunkhwa

SUBJECT: FIXATION PROTECTION OF PAY


Dear Sir,

I submitted an application on the above subject dated 11.10.2013 (Copy enclosed) wherein I requested to count my service rendered in Hazara University for the purpose of fixation of pay. Now it has been conveyed vide SOE-II Establishment Department letter dated 12.7.2013 that the competent authority has regretted the same being not covered under the rules.

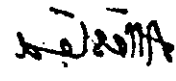
In this regard it is submitted that according to Finance Department instructions dated 28.4.1992 "such appointment under the Govt shall be treated as fresh appointments and the incumbents will be allowed the benefit of previous service rendered in autonomous organization for the purpose of pension only..." (Copy enclosed). It is pertinent to mention that previously such benefits has been accorded to Mr. Amir Latif (PCS SC 82-18) (copy enclosed).

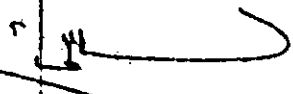
In view of the above, it is requested that the case may kindly be reviewed. Moreover as per rules 3(1) and proviso of Khyber Pakhtunkhwa Civil Servant Appeal Rules 1986 the delay of 27 days in submission of this appeal may be condoned.

Yours faithfully,


(MUHAMMAD TAUFIQ)
Section Officer-II
Establishment Department.

Personal Copy





SECTION OFFICER-II
Establishment Department
Khyber Pakhtunkhwa

Dated 12.3.2013



**HAZARA UNIVERSITY
MANSEHRA**

Ph: 0997-414163 Fax: 0997-414111

No. 4(2) HU/Reg/2013/2212

October 03, 2013

To

The Section Officer (E-II)
Govt. of Khyber Pakhtunkhwa,
Establishment Department,
Peshawar.

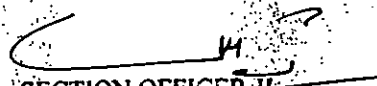
Subject: **FIXATION / PROTECTION OF PAY**

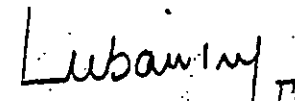
Dear Sir,

I am directed to refer your letter No.SO-E-II(ED)4(129)/2010 dated 17th May, 2012 on the subject noted above and to say that Mr. Muhammad Taufique served this University as Assistant Controller (BS-17) w.e.f. 20-07-2007 till 08-05-2010 when he was relieved of his duties to join his new assignment as per order of the Government of Khyber Pakhtunkhwa, Peshawar.

It is pointed out that Hazara University follows the pay scale scheme of the government and adopts the Basic Pay Scale in toto.

Attested


SECTION OFFICER II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar


Deputy Registrar
(Establishment)

To

The Secretary to Government of Khyber Pakhtunkhwa,
Establishment Department.

Subject: FIXATION/PROTECTION OF PAY

Dear Sir,

It is humbly requested that I intend to submit following points for your consideration and favourable action:-

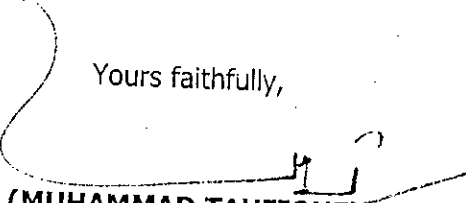
- i) That I was appointed as Assistant Registrar/Assistant Controller, Hazara University, Mansehra on 18.7.2007 (F/A).
- ii) Later on, I applied for the post of PMS BS-17, through proper channel (F/B) and was appointed as PMS BS-17 on 5.5.2010 (F/C), I was relieved from Hazara University on 8.5.2010 (F/D) thus I served in Hazara University from 18.7.2007 TO 8.5.2010 and reported my arrival on 09.05.2010.
- iii) That my running basic pay which I have last drawn as Assistant Registrar/Assistant Controller in Hazara University was amounting to Rs. 11330/- p.m (LPC F/E) and upon my appointment as PMS BS-17, the A.G. office fixed my pay as Rs. 9,850/- p.m and did not provide me the facility of pay protection as per Govt policy (F/F) although it was very clear difference between my old basic pay and new in PMS.
- iv) That as per Finance Department's instructions I am entitled for provision of previous benefits of pay protection/pension (F/F)

2. Keeping in consideration the above facts it is requested that my previous service rendered as Assistant Registrar/Assistant Controller, Hazara University, Mansehra may please be counted for the purpose of pay protection/pension and grant me its benefits accordingly.


3. I shall be very thankful for this act of kindness.

ENCL: AS ABOVE.

Yours faithfully,

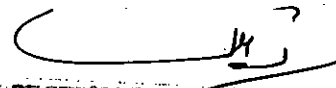

(MUHAMMAD TAUFIQUE)
PMS BS-17
SECTION OFFICER (ESTT-I)
ESTABLISHMENT DEPARTMENT

p/c


24/4/12

PS to Sec: Estab:

Attest &


SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

To,

The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- **FIXATION/PROTECTION OF PAY.**

Sir,

I am Provincial Management Service Officer (BPS-17) of Khyber Pakhtunkhwa. Before joining the Provincial Civil Service I was serving as Assistant Registrar/Assistant Controller of Examination (BPS-17) in Hazara University, Mansehra.

2. I applied through proper channel **(F/A)**, on selection relieved accordingly to join Civil Services **(F/B)** and LPC was also issued to me **(F/C)**.

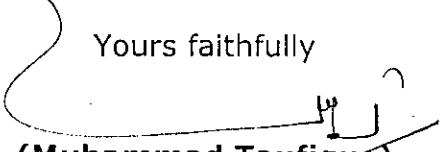
3. As per Policy letter **(F/D)** issued by Finance Department which provides that the benefit of pay protection will be available to the employees of such autonomous Organizations who have adopted scheme of basic pay scales in to-to on their appointment in Government offices provided they have applied for the post through proper channel. Although I was entitled for pay protection ***but I was not granted the benefit of this Policy*** as the running basic pay last drawn as Assistant Controller in Hazara University was Rs. 11,330/- whereas, the AG Office fixed my pay as Rs. 9,850/- leaving me deprived in this regard.

4. Earlier I applied for the same facility of pay protection **(F/E)** but was not acceded to **(F/F)**. However, in a similar case Mr. Aamir Latif was granted the benefit of pay protection (Record is available in E-II Section of Establishment Department).

5. In view of above it is requested that my application for the subject purpose may kindly be reconsidered and I may kindly be granted the benefit of fixation/protection of pay as per Policy.

Regards,

Yours faithfully

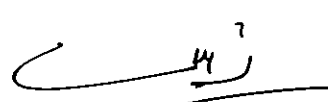

(Muhammad Taufique)

P.M.S. 11.10.12.

Section Officer (P-I)
Cabinet Division
Government of Pakistan
Islamabad
Tele # 9206498

Personal copy.

Attested


SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

To


The Section Officer (E-II),
Establishment Department.

was
10/11/13

Subject: - FIXATION/PROTECTION OF PAY.

The undersigned submitted an application to the Chief Secretary Khyber Pakhtunkhwa on 11.10.2012 on the above subject. Outcome of the same has not yet been intimated to the undersigned.


2. It is therefore, requested that outcome of the application in-question may be communicated to the undersigned.


(MUHAMMAD TAUFIQUE)
SECTION OFFICER (R-II)
ESTABLISHMENT DEPARTMENT.
Phone No.9211785

p/c.

Dated 10.1.2013.

Attested


SECTION OFFICER-II
C/M Secretariat
Khyber Pakhtunkhwa
Peshawar

To

The Chief Secretary,
Khyber Pakhtunkhwa.

SUBJECT:- FIXATION/PROTECTION OF PAY.


Dear Sir,

I submitted an application on the above subject dated 11.10.2012 (Copy enclosed) wherein I requested to count my service rendered in Hazara University for the purpose of fixation of pay. Now it has been conveyed vide SO(E-II) Establishment Department letter dated 15.1.2013 that the competent authority has regretted the same being not covered under the rules.

2. In this regard it is submitted that according to Finance Department instructions dated 28.4.1995 " **such appointment under the Govt shall be treated as fresh appointments and the incumbents will be allowed the benefit of previous service rendered in autonomous/semi autonomous organization for the purpose of pension only...**" (Copy enclosed). It is pertinent to mention that previously such benefits has been accorded to Mr.Amir Latif (PCS SG BS-18) (copy enclosed).


3. In view of the above, it is requested that the case may kindly be reviewed. Moreover as per rules 3(1) 2nd proviso of Khyber Pakhtunkhwa Civil Servant Appeal Rules 1986 the delay of 27 days in submission of this appeal may be condoned.

Yours faithfully,

Attested


Dated 12.3.2013

SECTION OFFICER-II
C/M Secretariat
Khyber Pakhtunkhwa
Peshawar


(MUHAMMAD TAUFIQUE)
Section Officer(R-II)
Establishment Department.
Personal Copy.



NO.SOE-II(ED) 4(129)/2010
Dated Peshawar the August, 07, 2012

To

Mr. Muhammad Taufique,
Section Officer(E-I),
Establishment Department.

Subject:- FIXATION/PROTECTION OF PAY

I am directed to refer to your application dated nil on the subject noted above and to inform that your case was processed and taken up with Finance Department accordingly. However, the said Department has regretted its inability to accede to your request.

Attested

SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

(TABASSUM)
SECTION OFFICER (E-II)



GOVERNMENT OF KHYBER PA
ESTABLISHMENT DEPAI

Page-20 Annex-L

NO.SOE-II(ED) 4(129)/2010
Dated Peshawar the January, 15. 2013

To

✓ Mr. Muhammad Taufique,
Section Officer(R-II),
Establishment Department.

Subject:- FIXATION/PROTECTION OF PAY

I am directed to refer to your application dated 10.01.2013 on the subject noted above and to inform that the competent authority has regretted the same being not covered under the rules.

Attested

~~Attested~~

SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

(TABASSUM)
SECTION OFFICER (E-II)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

NO.SOE-II(ED) 4(129)/2010
Dated Peshawar the September, 19. 2013

To

Mr. Muhammad Taufique,
Section Officer,
Chief Minister's Sectt.

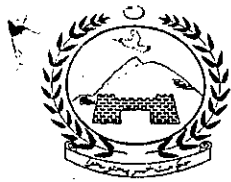
Subject:- FIXATION/PROTECTION OF PAY

I am directed to refer to your application dated 12.03.2013 on the subject noted above and to inform you that your request was referred to Finance department for advice in the matter, now Finance Department has regretted the same being not covered under the relevant rules. (copy enclosed).

(TABASSUM)
SECTION OFFICER (E-II)

Attested

SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

NO. FD (SR-1)12-5/2011
Dated Peshawar the: 18-06-2012

To: The Section Officer (E-II),
Establishment Department,
Peshawar.

Subject: - FIXATION / PROTECTION OF PAY.

I am directed to refer to your letter No.SOE-II(ED) 4(129)/2010 dated 17-05-2012 on the subject noted above and to state that Finance Department regret its inability to accede to the request being not covered under the rules.

A
18/06

2

SMA
(SHAUKAT ULLAH)
SECTION OFFICER (SR-1)

Attested

[Signature]
SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

24-SEP-2013 14:26



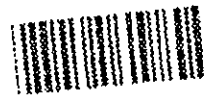
GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Deputy Secretary (E
Estab
Dist: 617

655607 NO.FD(SOSR-IP)415/2013
11-9-13 Dated Peshawar the 06/09/2013

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Establishment Department.



104

Subject: - FIXATION / PROTECTION OF PAY

Dear sir,

I am directed to refer to your letter No.SOE-II(ED)4(129)/2010 dated 09/07/2013 on the subject noted above and to state that the request of Mr.Muhammad Taufiq PMS BPS-17 has already been examined by Section Officer (E-II) Establishment Department and regretted by this Department vide letter of even number dated 18/06/2012. As regard the benefit of counting of service rendered to the autonomous body for the purpose of grant of pension the case may be examined/decided in light of this Department letter dated 24/08/1995 (Copy enclosed) and the facility may be allowed subject to the observance of conditions mentioned therein.

Yours faithfully,

SECTION OFFICER (SR.II)

Encl: As above

Secy I II
11-9-13
DSE

Indi
SOE-II 12/09

Attested

SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

To

The Honorable Chief Minister,
Khyber Pakhtunkhwa.

Subject: **FIXATION/PROTECTION OF PAY.**

Sir,


I am PMS Officer and prior to join PMS I was serving Hazara University as Assistant Controller/Assistant Registrar BS-17. I applied for PMS through proper channel (**Flag "A"**) and Hazara University had adopted scheme of Government pay scale in to-to (**Flag "B"**).

As per Government policy (**Flag "C"**) the benefit of pay protection will be admissible to employees of such autonomous organization who have adopted scheme of basic pay scales in to-to on their appointment in Government offices provided they have apply for the post through proper channel but I was not allowed pay protection. My pay was not fixed on the relevant stage. I was allowed fresh basic salary of BS-17.

Earlier I applied to Secreary Establishment (**Flag "D"**) as well as the Chief Secretary Khyber Pakhtunkhwa for allowing me the fixation of pay (**Flag "E"**) on its proper stage but my application was regretted (**Flag "F"**) however two PMS officers (One Senior and One Junior to me) were given this benefit. Copies of their notifications are placed at (**Flag "G" & Flag "H"**) for ready reference.

In view of above, it is requested that I may for purpose of pay kindly be given the facility of fixation/protection of pay counting my service rendered in Hazara University.

Yours faithfully,


(Muhammad Taufique)

Section Officer/Confidential Officer,
Chief Minister's Secretariat.

19-05-2014.

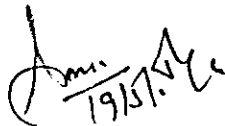
Personal Copy.

Received.


Office of the PSCM

D. No. 955 W/E

Date: 19-05-14


19/5/14

Attested


SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar


(KHURSHID ALAM)
Section Officer (SR-I)



**CHIEF MINISTER'S SECRETARIAT
KHYBER PAKHTUNKHWA
PESHAWAR**


No. SO (Admn.)CMS/KPK/2014
Dated Peshawar the 19th August, 2014/9527

To

Mr. Muhammad Taufique,
Section Officer-II,
Chief Minister's Secretariat.

Subject: - **FIXATION/PROTECTION OF PAY.**

Please refer to your request made to the Chief Minister on the subject noted above and to inform you that your case has been regretted.


(MANZOOR AHMED)
SECTION OFFICER (Admn.)

Attested



SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar



Dated Peshawar the March, 18.2013

NOTIFICATION

NO.SOE-II(ED) 4(251)/2012:- In terms of Finance Department Circular letter No. FD(SR-I) 12-5/2012 dated 26.12.2012, sanction to pay protection is hereby accorded in favour of Mr. Anwar-ul-Haq, PMS BS-17, Additional Assistant Commissioner.

SECRETARY ESTABLISHMENT

ENDST. NO. AND DATE EVEN.

A copy is forwarded to:-

1. Commissioner, Malakand Division, Swat
2. Deputy Commissioner, Swat.
3. District Accounts Officer, Swat.
4. SO(Admn), Administration Department.
5. Officer concerned.
6. PS to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Secretary Establishment Department.
8. PS to Special Secretary(Estt), Establishment Department.
9. PAs to Additional Secretary(Estt)/Deputy Secretary(Estt) Estt: Dept.
10. Personal file of the officer.
11. Office order file.

Attested

[Signature]

SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

IHSAN AFRIDI

[Signature]

(TABASSUM)
SECTION OFFICER (E-II)

GOVERNMENT OF N.W.F.P.
ESTABLISHMENT DEPARTMENT

Dated Peshawar the 28.1.2002.

ORDER


No.SOE-II(ED)2(438)/97:- In terms of Finance Department's letter No.SOSR-III(FD)4-112/80-Vol:II, dated 24.8.1995 and consequent upon the discharge of pensionary liabilities of Rs.76,876/- by the Registrar, University of Peshawar, sanction is hereby accorded to the counting of University service with effect from 28.10.1993 to 25.5.1997 towards Government service for the purpose of pension in respect of Mr.Amir Latif, PCS(EG) BS-17, presently Tehsil Municipal Officer, Bannu.

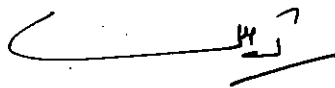
**SECRETARY,
ESTABLISHMENT**

ENDST. NO. AND DATE EVEN.

- A Copy is forwarded to:-
1. District Coordination Officer, Bannu.
 2. Accountant General, NWFP, Peshawar.
 3. SO(Secret)/SO(Admn)/E.O E&AD.
 4. District Accounts Officer, Bannu.
 5. PS to Secretary Establishment.
 6. Officer concerned.
 7. Office order file.
 8. Personal file.

Attested


(Rashid Khan)
Section Officer(E-II)


SECTION OFFICER-II
CM Secretariat
Khyber Pakhtunkhwa
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 1150/2014

Mr. Muhammad Taufique, PMS BS-17, Section Officer, Chief Minister's Secretariat
.....(Appellant)

Versus

1. Chief Minister, Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
 2. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
 3. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.
 4. Secretary to Govt of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
- (Respondents)

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Brief:

Mr. Muhammad Taufique is a directly recruited PMS BS-17 officer of 2010 Batch & prior to joining PMS, he was serving in Hazara University, Mansehra as Assistant Controller (BS-17) on contract basis. The officer applied thrice for fixation/protection of pay with reference to Finance Department letter dated 24.08.1995 and requested for benefit of previous service rendered in autonomous Organization.

As the benefit of previous service is only admissible for regular employees of autonomous bodies, thus the plea of the officer is not worth consideration.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
2. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
3. That the appellant has suppressed material facts from the Tribunal.
4. That the appellant has not come to the Court with clean hands.
5. That the instant appeal is hit by Section 4 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974

ON FACTS:



- 1) Pertains to record. Need no comments.
- 2) Pertains to record.
- 3) Pertains to record, however, he was a "Contract Employee".
- 4) Correct. Pertains to record.
- 5) Pertains to record. Needs no comments.
- 6) Correct.
- 7) Correct to the extent that the said benefit is applicable for the regular employees of autonomous/semi-autonomous organizations in light of Finance Department instructions dated 24.08.1995. It is further added that appellant is not entitled to the benefit of Finance Department (substituted) circular letter No. FD (SR-1)12-1/2011 dated 04.6.2011 on the grounds that said letter is effective from the date of its issuance i.e. 04.6.2011 and not retrospectively. (Annexure-A)
- 8) As above.
- 9) Incorrect. The appellant being contract employee does not fulfill the said criteria under Finance Department's instructions date 24.8.1995 and 23.12.1984.
- 10) Incorrect as explained above.
- 11) Correct.
- 12) Correct.
- 13) Incorrect. Every case has got its own peculiar facts & circumstances and therefore the facts of one case cannot be generalized to all others cases. The said officers i.e. Mr. Aamer Latif (Ex-EAC) and Mr. Anwar-ul-Haq (PMS BS-17) were granted pay protection as both were "**Regular Employees**" of University of Peshawar & Benazir Bhutto Shaheed University, Shiringal, Dir respectively.
- 14) No comments.

ON GROUNDS:

- A. Incorrect. The application was treated in accordance with law / rules.
- B. Incorrect. As earlier explained at Para-7 of facts.
- C. As explained earlier.
- D. As earlier explained at Para-9 of facts.
- E. As explained earlier at Para-13 of facts.

In view of the above submissions/facts, the instant appeal
being devoid of any merit may please be dismissed with cost.


(Respondents to 3)


(Respondent No.4)
SECRETARY
Govt. of Khyber Pakhtunkhwa
Finance Deptt:


Annex 'A'

TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

NO. FD (SR-1) 12-1/2011

Dated Peshawar the: 4th June, 2011

TO:

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All District Coordination Officers in Khyber Pakhtunkhwa.
10. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
11. The Registrar, Peshawar High Court, Peshawar.
12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: **FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.**

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No.FNo.4(2)R-II/1996-235/2010, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1921(R) CS/2005 in respect of *Mr. Sajjad Rashid* and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that **henceforth** the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic pay scales in to-to on their appointment in government offices, provided they have applied for the post through proper channel.

Yours Faithfully,

(MASOOD KHAN)
Deputy Secretary (Reg-II)

Endst:of even No. & date.

Copy forwarded for information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
2. Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. All District Comptrollers of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
5. Director, FMIU, Finance Department
6. PS to Minister, Finance, Khyber Pakhtunkhwa.
7. P.S to Secretary Finance.
8. PA to Spl: Secretary Finance.

(SHAUKAT ULLAH)
Section Officer (SR-I)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 922 /ST

Dated 31 / 5 / 2016


To

The Chief Secretary,
Peshawar.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 24.5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Mr. Muhammad Taufique, PMS-BS-17, Section Officer, Chief Minister's Secretariat. ... **Appellant**

Versus

Chief Minister, Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat etc. ... **Respondents**

Service Appeal No. 1150/2014

REJOINDER

Respectfully Sheweth,

Para wise answer to comments on behalf of appellant is as under:

ANSWER TO THE BRIEF.

1. **Para-1 of the brief is correct only to the extent** that the appellant is a directly recruited PMS-BS-17 officer of 2010 Batch and prior to joining PMS he was serving in Hazara University as Assistant Controller (BS-17) **but incorrect and misleading** to the extent that the appellant applied for fixation/protection of pay with reference to the Finance Department letter dated 24-08-1995 thrice. **Fact of the matter** is that the appellant applied for fixation/protection of pay with reference to the Finance Department letter dated 24-08-1995 once and **three times with reference to the Finance Department letter dated 4th June, 2011** (copies of applications under Finance Department letter dated 04-06-2011 containing even the text of letter ibid have already been annexed with the appeal vide Annex-"H", "I" & "N" Page 15, 16 & 24).
2. **The second paragraph of the brief is incorrect.** The benefit of fixation/protection of pay under the Finance Department letter dated 04-06-2011 is admissible to all types/kinds of the employees irrespective of being regular or contract employee who fulfill the following two conditions:
 - i. *The original organization of the officer has adopted the scheme of basic pay scale in to-to.*
 - ii. *The officer has applied to his present job through proper channel.*

ANSWERS TO THE OBJECTIONS MADE ON PRELIMINARY OBJECTIONS.

1. Incorrect, The appellant applied four times to the respondents but they did not treat him as per policy, rules, hence the appellant approached this Hon'able Tribunal.
2. The appellant presented the facts objectively with documentary proofs as it is.

3. The appellant did not conceal any material facts however the respondents did the same as mentioned in brief above.
4. The appellant approached this Hon'able tribunal once the respondent rejected his applications/appeals.
5. Pertains to record, needs no answer/reply.

ANSWER TO THE OBJECTIONS MADE ON "FACTS".

1. Pertains to record, needs no answer/reply.
2. Pertains to record, needs no answer/reply.
3. Pertains to record. However the Finance Department letter dated 04-06-2011 does not mention any kind/type of employees entitled for the benefit of fixation /protection of pay nor exclude or disentitle the contract employees from the benefit of fixation/protection of pay. Rule 22(b) of fundamental Rules even entitles a person for increments if he held a post of identical time scale even on temporary or officiating capacity.
4. Pertains to record, needs no answer/reply.
5. Pertains to record, needs no answer/reply.
6. Needs no answer/reply.
7. Correct to the extent that in light of Finance Department instructions dated 24-08-1995 the benefit of fixation/protection of pay is allowed to the regular employees of autonomous/semi-autonomous organization **but incorrect to the rest and submitted that:**

As per respondents the Finance Department letter dated 04-06-2011 stands substituted dated 04-06-2011 (same day) and said letter is effective from the date of its issuance i.e 04-06-2011 and not retrospectively.

- i. The substitution is malafide, dubious and purely made to deprive the appellant from his due rights.
- ii. The substitution of letter with the word "henceforth" means that the benefit of fixation/protection of pay shall be w.e.f certain date (04-06-2011), adding another condition to eligibility criteria for fixation/protection of pay.
- iii. **BUT**, Finance Department in its letter **dated 26-12-2012** communicated the eligibility criteria for fixation/ protection of pay, the only two following conditions, which the appellant already fulfilled, without any cut date or limitation.
 - a. *The original organization of the officer has adopted the scheme of basic pay scale in to-to.*
 - b. *The officer has applied to his present job through proper channel.*

- iv. By so called substitution the respondents deprived the appellant from its rights in glaring violation of Article 25 of the Constitution.
- v. The respondents deprived the appellant from increment for being contract employees but rule 22(b) of Fundamental Rule entitles a person for increment who has held a post of identical time-scale on temporary or in officiating capacity and "*his pay shall not be less than he received on last such occasion*" (copy enclosed).
8. As above.
9. Incorrect and misleading. The appellant is requesting for the benefit of fixation/protection of pay on the basis and fulfilling the conditions laid down in Finance Department letter dated 04-06-2011 and dated 26-12-2012 and not under any circular/instructions what so ever.
10. As explained above.
11. Needs no answer/reply.
12. Needs on answer/reply.
13. Incorrect. The Finance Department circular dated 04-06-2011 provides for fixation/protection of pay to all kinds of employees irrespective of being regular or contract employees, hence, the cases referred in appeal do have similarity with the case of appellant.
14. Needs no answer/reply.

ANSWER TO THE OBJECTION MADE ON "GROUNDS".

- A. The respondents did not act according to the rules/policy.
- B. As explained in the answers to the facts in Para 7 above.
- C. As explained earlier.
- D. As explained in the answers to the facts in Para 9 above.
- E. As explained in the answers to the facts in Para 13 above.

Therefore, it is most humbly submitted that the service appeal of the Appellant may kindly be accepted as prayed for.


Muhammad Taufique
Appellant

AFFIDAVIT

I, Muhammad Taufique, PMS Officer (BS-17) Govt. of Khyber Pakhtunkhwa presently posted as Section Officer at Chief Minister's Secretariat Khyber Pakhtunkhwa, do hereby solemnly affirm and declare that the contents submitted herein above are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.


APPELLANT.

Dated.22-12-2015

Code No.

FGL-00

**THE CONSTITUTION
OF THE
ISLAMIC REPUBLIC
OF PAKISTAN**

**AS AMENDED BY THE
LEGAL FRAMEWORK ORDER, 2002**

Corrected & Modified

by

HAMID ALI

M.A., M.Ed., LL.B.

ZAKA ALI

ADVOCATE HIGH COURT

(Exponents of Civil Service, Labour, Taxation & General Laws)

REVISED EDITION

2002



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- (c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or
- (d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or
- (e) any law providing for the acquisition of any class of property for the purpose of—
 - (i) providing education and medical aid to all or any specified class of citizens; or
 - (ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or
 - (iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or
- (f) any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

25. (1) All citizens are equal before law and are entitled to equal protection of law.

Equality of citizens.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

26. (1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

Non-discrimination in respect of access to public places.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

27. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:

Safeguard against discrimination in services.

Provided that, for a period not exceeding ^{*}[forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan:

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

^{*}Subs. by P.O. No. 14 of 1985, Art. 2 and Sch., for "ten", which again subs. by the Constitution (Sixteenth Amdt.) Act, 1999 (Act No. VII of 1999), the Gaz. of Pak., Extr., Pt. I, P. No. 1237, dt. 5th August, 1999.

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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-scale of the new post is higher than his substantive pay in respect 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 under rule 15(a) and the maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay.

Exception.—Telegraph Masters and Telegraphists of the Pakistan Posts and Telegraphs Department who are at their own request transferred from "General Service" to "Station Service" and whose substantive pay in the General Service Scale is higher than the maximum pay of the time scale of the Station Service sanctioned for the Station to which they are transferred will, in addition to the maximum pay in the time-scale of such Station Service, draw personal pay equal to the difference between the two.

- (b) If the conditions prescribed in clause (a) are not fulfilled he will draw as initial pay the minimum of the time-scale.

Provided, both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation from the public service (or after removal from the public service for inefficiency, misconduct or as a disciplinary measure,) covered by clause (b), that if he either—

- (1) has previously held substantively or officiated in—

- (i) the same post, or
- (ii) a permanent or temporary post on the same time-scale, or
- (iii) a permanent post other than a tenure post, on an identical time-scale, or a temporary post on an identical time-scale, such post being on the same time-scale as a permanent post, or

- (2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated,

*Inserted with effect from 7th January, 1952 by G.P., M.F. Notification No. F. 20-11(3)-R. II/53, dated the 5th September, 1953.

then the initial pay shall not be less than the pay, other than special pay, personal pay or emoluments classed as pay by the Governor-General under rule 9(21) (a) (iii), which he drew on the last such occasion, and he shall count for increments the period during which he drew that pay on such last and any previous occasions. If, however, the pay last drawn by the Government servant in a temporary post has been inflated by the grant of premature increments the pay which he would have drawn but for the grant of those increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post.

Exception.—The condition in paragraph (iii) of the first proviso that the temporary post should be on the same time-scale as a permanent post shall not be enforced when a temporary post is (i) created by one Government or Department for the purpose of work of the same nature as the ordinary work for which permanent posts exist in a cadre under a different Government or Department and (ii) sanctioned on a time-scale identical with the time-scale applicable to the permanent posts in the cadre under the different Government or Department.

NOTE 1.—If the Government servant is entitled to overseas pay in the new post but was not drawing overseas pay in the old post, the overseas pay in the new post shall not be taken into account in determining the stage in the time scale of the new post to which he is entitled under clause (a).

NOTE 2.—For the purposes of this Rule sterling overseas pay shall be converted into rupees at the official rate of exchange.

Government decisions—

- (1) The Governor-General has decided that reversion to the ordinary cadre of service from a tenure post included in that cadre or from a tenure or special post not included in it, does not constitute substantive appointment to a post for the purposes of F. R. 22.

[G.I., F.D., No. F.15-C. S.R.-27, dated the 22nd January, 1927.]

- (2) The Government have decided, after consultation with the Auditor General, that for the purposes of Fundamental Rule 22 and 30 a declaration as to the relative degrees of responsibility of two posts should be obtained from the administrative head of the department or the Government according as the posts are in the same or different departments.

[G.I., F.D., No. F/113-R. 1/30, dated the 19th August, 1930.]

- (3) A question arose whether identical time-scale—one attached to posts whose pay is governed by the Civil Service Regulations and the other subject to conditions prescribed by the Fundamental Rules—could be treated as identical for the purpose of the Pay Chapter in the Fundamental Rules. It has been decided with the concurrence of the Auditor General that when two posts are on identical time-scale,