

**ORDER**

04.04.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan,  
learned District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, we remit the  
matter back to respondents to decide it within sixty days positively after  
receipt of copy of this judgment. Costs shall follow the events. Cosign..  
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 4<sup>th</sup> day of April, 2024.*



**(Kalim Arshad Khan)**  
Chairman



**(Rashida Bano)**  
Member (J)

\*M.Khan

decision of the Tribunal and they adjusted him as Senior Clerk forcefully when execution petition was filed by the appellant then impugned order was passed by the respondents. Committee had referred to the short/missing items, details of which are not available on record. Moreover, without obtaining proper advice from the Establishment Department, the impugned order was issued by the respondents. Therefore, it would be appropriate that respondent may decide the matter at their own end having regard to peculiar circumstance of the appeal in hand with regard to salaries of intervening period as Senior Clerk. We remit the matter back to respondents to decide it within sixty days positively after receipt of copy of this judgment. Costs shall follow the events. Cosign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4<sup>th</sup> day of April, 2024.*



(Kalim Arshad Khan)  
Chairman



(Rashida Bano)  
Member (J)

post of Senior Clerk BPS-9 on 31.07.2008. On 31.10.2012 appellant was repatriated to his parent department i.e Agricultural Engineering as Junior Clerk, which order was challenged by him in service appeal No. 604/2013, wherein vide order dated 11.02.2016 respondents were directed to convene meeting of all the stakeholders in which the issue, including the outstanding salary, if any, may be properly discussed and resolved in accordance with law and rules within sixty days of receipt of the judgment. Respondent after receipt of judgment, convened a meeting on 16.07.2016, wherein the appellant was promoted to the post of Senior Clerk upon the recommendation of DPC meeting and was directed to be adjusted against the vacant post of Senior Clerk. Committee also held that no proof/record of absence was procured or found. therefore, order dated 31.10.2012 was illegal to the extent of long absence of the appellant from duty. Committee, in respect of withheld salary of the appellant from 01.07.2010 to 31.10.2013, directed to release it subject to return of short/missing items or it might be recovered from the salary of the appellant. Committee sought advice from Establishment Department on the point that appellant did not join as Junior Clerk due to wrong order of District Officer Soil Conservator Tank dated 30.04.2013 because he was senior Clerk from 11.05.2013 to date in respect of that whether this period from 01.05.2013 consider on duty or otherwise, but respondent vide order dated 01.03.2017 adjusted the appellant as Senior Clerk (BPS-14) with immediate effect by considering period w.e.f 01.11.2012 till his arrival in the concern office as extra-ordinary leave without pay.

8. It is admitted on record that in the committee meeting it was held that appellant was on duty till 30.04.2013 and he withdrew salaries till 30.04.2013 as Senior Clerk, which is evident from LPC annexed with the appeal. Appellant also approached respondents time and again for his adjustment as Senior Clerk even after

against law, facts and norms of natural justice; that the appellant was not adjusted by the department which was not the fault of appellant and the appellant was fully entitled to full salaries; that if the grievance of the appellant was not resolved, then he would face huge financial loss; that the appellant served for more than four years which period was not counted; that the appellant was legally entitled for his pay under section-17 of the Civil Servants Act, 1973, hence, the impugned order was liable to be modified; that the relevant authorities restrained the appellant from performance of duty due to their improper exercise of official power, therefore, he could not be deprived from his legal rights of salaries; that the appellant had submitted arrival but the respondents had not submitted the same which was not the appellant's fault. Lastly, he submitted that the appellant being a cancer patient and fully entitled to salaries, the instant service appeal may kindly be accepted as prayed for.

5. As against that, District Attorney argued that the appellant had not performed his duties during the period, hence, appellant was not entitled for any pay or remuneration; that the appellant had not reported at the office of Director Agriculture Engineering, hence, not entitled for pay. Further, submitted that the appellant was responsible for his financial loss as he had not performed his duties during that period; that no irregularity had been committed by the respondents. Lastly, he submitted that there was no proof that the respondents had restrained the appellant from performing his duties, therefore, he requested for dismissal for the instant service appeal.

6. Perusal of record reveals that appellant was appointed as Field Assistant in the office water management department and was transferred and promoted to the



**arrival may be treated as period with full pay or leave of kind due with all back and consequential benefits. Any other remedy which this august tribunal deems fit and appropriate that may also be awarded in favor of appellant.”**

2. The appellant's case in brief is that he was appointed as Field Assistant in the On Farm Water Management Project on 19.07.1986; that on abolition of the post of Field Assistant, he was adjusted as Junior Clerk vide order dated 15.07.1987; that the appellant was transferred to the office of District Soil Conservator vide order dated 03.11.2001; that in the meanwhile, he was promoted as Senior Clerk vide order dated 31.07.2008; that on 31.10.2012 he was repatriated to his parent Department i.e. Water Management and was showed as Junior Clerk; that the parent department refused his arrival on the reason of non-availability of vacant post; that the appellant filed Service Appeal No.604/2013 before this Tribunal and in the meanwhile, he was allegedly working in the office of Soil Conservator, Tank; that his appeal was remanded back to the department for decision within 60 days vide order dated 11.02.2016; that for implementation of the judgment he filed Execution Petition No.100/2016 and during the pendency of the said petition, the respondents passed the impugned order dated 01.03.2017, wherein, he was adjusted against the post of Senior Clerk but the period w.e.f. 01.11.2012 till his date of arrival, was treated as without pay; that feeling aggrieved, he filed departmental appeal, which was not responded, hence, the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments. We have heard learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant submitted that the impugned order was



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.1200/2017

**BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN**  
**MRS. RASHIDA BANO ... MEMBER (J)**

Muhammad Ismail, Senior Clerk, District Officer Soil Conservation Bannu.

... (Appellant)

**VERSUS**

1. The Secretary Agriculture, Khyber Pakhtunkhwa, Peshawar.
2. The Director General Engineering Department, Tarnab Farm Khyber Pakhtunkhwa, Peshawar.
3. The Director Soil Conservation, Tarnab Farm, Khyber Pakhtunkhwa, Peshawar.
4. Executive District Officer Agriculture, Tank.
5. District Officer Soil Conservation, Tank.
6. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Syed Noman Ali Bukhari  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....31.07.2017

Date of Hearing.....04.04.2024

Date of Decision.....04.04.2024

**JUDGMENT**

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

**“That on the acceptance of this appeal, the impugned order dated 01.03.2017 communicated to the appellant on 03.03.2017 may be modified and period with effect from 01.11.2012 till**

