

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR
AT CAMP COURT SWAT

BEFORE: RASHIDA BANO ... MEMBER (J)
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 1254/2022

Date of presentation of Appeal.....26.08.2022
Date of Hearing.....03.06.2024
Date of Decision.....03.06.2024

Kifayat ullah S/o Abdul Haleem (Ex-Forest Guard) R/o Shah Narai P.O Khar,
Tehsil Khar District Bajur.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary, Forestry, Environment & Wildlife Department Peshawar.
2. The Chief Conservator of Forest Central Southern Forest Region I Shami Road Peshawar.
3. The Conservator of Forest Merged Area, Shami Road Peshawar.
4. The Budget and Accounts Officer, Forestry, Environment & Wildlife Department Peshawar.....(Respondents)

IMRAN KHAN,
Advocate

--- For appellant.

MUHAMMAD JAN,
District Attorney

--- For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):-The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"On acceptance of this appeal the temporary service of the appellant i.e. from initial appointment, may please be counted towards regular service for the purpose of adding it to the pensionable service, the respondents may further be directed to

enter necessary entries in their service record to this effect w.e.f the date of his appointment as temporary/fixed pay basis. Or any remedy deem just and proper under the circumstances may also be allowed in favor of the appellant and against the respondents.”

02. Brief facts of the case are that the appellant was initially appointed as Forest Guard (BPS-02) in the respondent department vide order dated 15.04.1993. Later on the services of the appellant was converted/adjusted into regular service vide order dated 31.07.2002. The appellant retired from service on attaining the age of superannuation i.e. 60 years on 31.12.2021 but his temporary service was not counted towards regular service for the purpose of pension. Feeling aggrieved the appellant filed departmental appeal on 28.03.2022 which was not responded, hence preferred the instant service appeal on 26.08.2022

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned Additional Advocate General for the respondents and have gone through the record with their valuable assistance.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney, controverted the same by supporting the impugned order(s).

05. It is evident from the record that the appellant was appointed as Forest Guard in BPS-02 on contract basis against the project post. Condition No. 1 of his appointment order is reproduced below:-

Their appointments are purely temporary and on contract basis. Their services can be terminated without giving notice or assigning any reason at any time or on expiry/completion of scheme abolition of the post whichever is earlier. They will not confer any right of continuity on post/absorption else-where or regularization of their services.

06. Record further reveals that the contract of the appellant had been terminated and re-appointed having several service break. The services of the appellant alongwith his post were converted into BPS-05 from Developmental Scheme into regular budget w.e.f. 01.07.2002 vide order dated 31.07.2007. The appellant has taken the stance of his service rendered against the project post be counted towards his service for purpose of pension in accordance with rule 2.3 of the West Pakistan Civil Service Pension Rules. Rule 2.3 of the ibid rules provide as under:-

Temporary and officiating services shall count for pension:

Government servants borne on temporary establishment who have rendered more than 5 years continues service shall count such service for the purpose of pension of gratuity

07. The provision of above rule clearly spells out more than five year continuous service to be eligible for the pension or gratuity whereas in case of the appellant his contract services as a project employee since 1993 to the year 2000 have been terminated and re-appointed several times, therefore, we hold that when there is broken period than no regularization or any benefits of the

contractual appointment against the project post could be given to civil servants appointed on regular basis after the broken period.

08. In view of the above the appeal in hand stands dismissed. Costs shall follow the event. Consign.

09. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 03rd June, 2024.*



(RASHIDA BANO)
Member (J)
Camp Court Swat



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat

ORDER

03rd June, 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.
2. Vide our detailed judgment of today, separately placed on file, the appeal in hand is dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal on this 03rd June, 2024.*



(RASHIDA BANO)
Member (J)
Camp Court Swat



(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat