

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 370/2019

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

Samar Naseem, Electrician o/o the Assistant Director Fisheries, Carp Hatchery & Training Centre, Sher Abad, Peshawar.

.....(*Appellant*)

Versus

1. Secretary to the Government of Khyber Pakhtunkhwa, Agriculture Department, Civil Secretariat, Peshawar.
2. Director General, Fisheries Khyber Pakhtunkhwa, Shami Road, Peshawar.(*Respondents*)

Mr. Noor Muhammad Khattak,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution.....	15.03.2019
Date of Hearing.....	13.06.2024
Date of Decision.....	13.06.2024

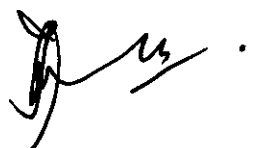
JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 22.02.2019 of respondent No. 1, whereby application of the appellant, for counting of his service w.e.f 18.04.1992 to 30.06.1996 towards qualifying service and condoning the intervening period w.e.f. 01.07.1996 to 12.11.2000 and treat it as leave without pay to bridge the gap between the previous and present service for the purpose of pension, was not considered. It has been prayed that on acceptance of the appeal, the impugned order dated 22.02.2019 might be set aside and the respondents



might be directed to count the previous service of the appellant w.e.f. 18.04.1992 to 30.06.1996, towards qualifying service and condone the intervening period w.e.f. 01.07.1996 to 12.11.2000 by treating the said period as leave without pay to bridge the gap for the purpose of pension.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined a project of Fisheries Department as an Electrician vide order of the Project Director of Fisheries, Khyber Pakhtunkhwa Peshawar dated 18.04.1992. His services were regularized vide order dated 17.10.1992. His services were terminated through an order dated 09.06.1996. He was appointed again in Fisheries Department as Electrician vide order of the Director Fisheries dated 13.11.2000 and posted at Carp Hatchery & Training Centre, Peshawar. He submitted an application on 17.12.2018 to the respondents for counting of his previous service rendered by him in the Fisheries Department towards qualifying service and condoning the intervening period w.e.f. 01.07.1996 to 12.11.2000 and to treat the said period as leave without pay to bridge the gap between the previous and present service for the purpose of pension. Application of the appellant was duly supported by a judgment dated 31.03.2010 of the Honourable Court of Senior Member Board of Revenue, Khyber Pakhtunkhwa in case of Muhammad Riaz Kanungo of Upper Dir whereby not only his previous service was counted towards his qualifying service but the intervening period of more than ten years was also condoned and treated as extraordinary leave without pay to bridge the gap between his previous and present service. Respondent No. 1 wrote a letter to the respondent No. 2



recommendations of the Departmental Selection Committee, he was freshly recruited as Electrician BPS- 03, with two years probation period, vide order dated 13.11.2000. He further argued that the service period in a project which was wound up on 30.06.1996 had no relevancy with his fresh appointment. Learned DDA requested that the appeal might be dismissed.

6. Through the instant service appeal, the appellant has impugned a letter dated 22.02.2019 of the respondent department through which his application for counting the service he rendered in a project and the period between his termination from project and appointment on regular basis in the respondent department was not considered. Arguments and record present before us show that the appellant was appointed as Electrician in the Fisheries Department in a project in 1992. His appointment order was issued by the Project Director on 18.04.1992. The first two conditions of his appointment were as follows:

- "1. His services would be liable to termination on the expiry of the project period of "Pak Second Aquaculture Development Project in NWFP.*
- 2. On the expiry/competition of the project SADP in NWFP his service will stand terminated and shall not confer on him any right of absorption elsewhere or regularization of his services."*

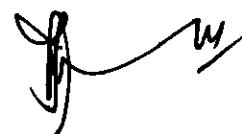
Later on his services were regularized by the Project Director on 17.10.1992 on the same terms and conditions as laid down in his initial appointment order, which meant that his initial period of appointment for six months was

for his comments on the application and after having received the comments, application of the appellant was rejected vide order dated 22.02.2019; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order dated 22.02.2019 was unlawful, void, arbitrary, illegal and without lawful authority. He argued that before termination, services of the appellant were regularized. He further argued that the respondents did not consider the order of the SMBR passed in similar nature case and unlawfully rejected the appeal of the appellant. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed as Electrician in BPS-03 by the Project Director Fisheries, Khyber Pakhtunkhwa, Peshawar in the office of Project Manager 2nd Aquaculture Development Project and as per condition No. 2 of the appointment order, on the expiry/completion of the project, his services would stand terminated and it should not confer on him any right of absorption elsewhere or regularization of his service. As per terms & conditions of his appointment order, on the expiry of the said project, his services were terminated with effect from 30.06.1996 vide office order dated 03.06.1996. On the



extended in the project. The project life expired on 30.06.1996 and in pursuance of the terms of his appointment, his services were terminated. The appellant was appointed as Electrician by the respondent department, after fulfilling all the codal formalities, as a regular employee, on 13.11.2000. He, then, submitted an application for counting his project service and the period between his termination from project and regular appointment towards pension by treating the later part as leave without pay. Learned counsel for the appellant referred to Pension Rule 2.3, which dealt with the temporary and officiating service. He further referred to FR 22 to strengthen his argument for counting the previous service and giving its benefit in the new appointment.


7. From the above discussion, one point is extremely clear that from 1992 to 1996, the appellant was a Project employee and when the project completed its life, services of the appellant were terminated and that termination was very much in line with the terms and conditions of his initial appointment order. From 1996 to 2000, he was not employed in any government department on regular basis. It was in November 2000 that he got appointed against a regular post in the respondent department. All the benefits of service accrued from the date when a government/civil servant was appointed on regular basis. He could not claim any benefit of the period during which he was on contract in a project which was for a specific purpose and for a limited time period. Moreover, his terms of appointment that he accepted at the time of appointment in the project in 1992 clearly stated that his services would be terminated on expiry of the project period



and that his appointment in the project and termination from there would not confer upon him any right of absorption elsewhere or regularization of his services. As far as pensionary benefits are concerned, they are allowed on the basis of regular service. As far as reference of the learned counsel for the appellant to Pension Rule 2.3 and FR 22 was concerned, the same did not apply on the appellant as he was a project employee and not a regular government/civil servant. As regards his reference to a judgment of the Senior Member Board of Revenue in case of Muhammad Riaz, a Patwari appointed for Settlement Operation in Mardan was concerned, we could not draw any parallel of the present appellant with that case as after winding up of that settlement operation in Mardan, all the patwaris were adjusted but Muhammad Riaz was left out and he was adjusted, later on, from the date when his other colleagues were adjusted. In case of the appellant, his services were terminated as per his terms and conditions and no example could be quoted before us that any similarly placed employee of that project was given the benefit that had been sought by the appellant in his service appeal.

8. In view of the above discussion, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13th day of June, 2024.*


(FARIEHA PAUL)
Member (E).

Fazle Subhan PS

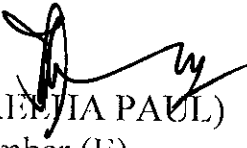

(RASHIDA BANO)
Member(J)

SA 370/2019

13th June, 2024 01. Mr. Noor Muhammad Khattak, Advocate Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06' pages, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of June, 2024.*


(FARIHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS