

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7552/2021

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

**Mr. Engineer Ishtiaq Ahmad, Assistant Engineer (E) BPS-17, MRS Cell
Communication & Works Department.**

.... (*Appellant*)

VERSUS

1. The Government: of Khyber Pakhtunkhwa through Chief Secretary, Peshawar
2. The Chief Engineer (Center) C&W Department Khyber Pakhtunkhwa Peshawar.

.... (*Respondents*)

Mr. Noor Muhammad Khattak
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....06.10.2021
Date of Hearing.....03.05.2024
Date of Decision.....03.05.2024

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 acceptance of this appeal the impugned appellate order dated 28.08.2021 communicated to the appellant on 23.09.2021 may kindly be set aside and the respondents may please be directed to release the monthly salaries of the appellant w.e.f 01.04.2021 till date with all back benefits. Any other remedy



which this august Tribunal deems fit that may also be awarded in favor of the appellant.

2. Brief facts of the case are that the appellant was appointed as an Assistant Engineer (Electrical) in the respondent department on contract basis. Later on, appellant's service was regularized through a notification dated 30.04.2018. He is serving the department quite efficiently and honestly and had received his monthly salary till March 2021. During service, the respondents stopped the monthly salaries of the appellant w.e.f 01.04.2021 till date. Feeling aggrieved, he filed departmental appeal, which was rejected vide order dated 20.08.2021, hence the present service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

5. 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).

6. Perusal of record reveals that appellant was appointed as an Assistant Engineer (Electrical) in the respondent department on contract, and his service was regularized on 30.04.2018. He served efficiently and received his monthly salary until March 2021. However, the respondents stopped his salaries from 01.04.2021, affecting his salary until now.



7. Perusal of schedule attached to Khyber Pakhtunkhwa employees (Regularization of Service) Act 2018 reveals that MRS Cell in C&W Department was created and appellant was posted there by regularizing his service on 30.04.2018. Section 6 of the Regularization of Service Act, 2018 regulate seniority of all the employees, it says

“whose services were regularized under this act with in the same service or cadre, shall be determine on the basis of their continuous officiation in such service or cadre”


For which Coordinator MRS Cell requested Chief Engineer vide letter dated 01.10.2020 C&W for enrolment of the appellant in the seniority list of the C&W Department but same was not considered.

8. Respondents in their reply have taken the plea that MRS was re-shifted to Finance Department by the approval of Chief Minister, Competent Authority. It is very astonishing that MRS Cell was created by the Act of Parliament and respondents, with simple approval of Chief Minister, re-shifted the MRS Cell to Finance Department. Act of Parliament is the Supreme Legislation and has preference upon any other order or approval of Chief Minister. Therefore re-shifting of MRS Cell to Finance Department from C&W Department upon orders of Chief Minister has no legal effect and Act being Supreme Legislation will prevail upon all other orders of all authorities.

9. As re-shifting of the MRS Cell to Finance Department is in violation of Act of 2018, which is supreme legislation and has preference upon orders of any executive authority, therefore, stopping salary of the appellant despite the fact that he is working in MRS Cell is contrary, against the law, rules and injustice.

10. For what has been discussed above, we are unison to accept the appeal in hand as prayed for. Costs shall follow the event. Consign.

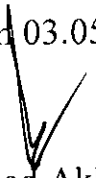
11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3th day May, 2024.*



(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kalcemillah

- 29.04.2024
1. Learned counsel for the appellant present. Mr. Arshad Azam learned Assistant Advocate General alongwith Zahid Habib, Administrative Officer for the respondents present.
 2. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 03.05.2024 before D.B. P.P given to parties.


(Muhammad Akbar Khan)
Member (E)

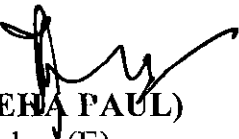

(Rashida Bano)
Member (J)


*Kaleemullah

ORDER

03.05.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Zahid Hamid, Administrative Officer for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal in hand as prayed for. 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 3rd day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah