

Service Appeal No. 6731 of 2021 titled "Sahib Sardar versus The Government of Khyber Pakhtunkhwa through the Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat, Peshawar and others" and connected Appeal No.7041/2021 titled "Sami Ur Rehman versus The Government of Khyber Pakhtunkhwa through the Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat, Peshawar and others" decided on 19.07.2024 by Division Bench comprising Kalim Arshad Khan, Chairman, and Rashida Bano, Member, Judicial Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**M. RASHIDA BANO ... MEMBER (Judicial)**

*Service Appeal No.6731/2021*

Date of presentation of appeal .....09.06.2021  
Dates of Hearing.....19.07.2024  
Date of Decision.....19.07.2024

**Sahib Sardar**, Research Assistant Urban Policy Unit, P&D Department,  
Peshawar.....(*Appellant*)

Versus

1. **The Government** of Khyber Pakhtunkhwa through the Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. **The Secretary** P&D Department, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. **The Secretary** Establishment Department, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
4. **The Secretary** Finance Department, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.....(*Respondents*)

Present:



Mr. Kabir Imam, Advocate.....For appellant.

Mr. Muhammad Jan, District Attorney.....For respondents.

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE NOTIFICATION NO. SO(E)P&D/3-1/REG:/PROJECT/2019 DATED 14.03.2019 UPTO THE EXTENT THAT APPELLANT IS ENTITLED FOR BPS-17 WHILE HIS REGULARIZATION WAS MADE IN BPS-16 AND REPRESENTATION OF THE APPELLANT WAS ALSO TURNED DOWN VIDE ORDER DATED 21.05.2021 WHICH IS AGAINST THE LAW AND RELEVANT RECORD.**  
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*Service Appeal No.7041/2021*

Date of presentation of appeal .....09.06.2021  
Dates of Hearing.....19.07.2024  
Date of Decision.....19.07.2024

**Sami Ur Rehman**, Research Assistant Urban Policy Unit, P&D Department, Peshawar.....(**Appellant**)

Versus

1. **The Government** of Khyber Pakhtunkhwa through the Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat; Peshawar.
2. **The Secretary** P&D Department, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. **The Secretary** Establishment Department, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
4. **The Secretary** Finance Department, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.....(**Respondents**)

Present:

Mr. Kabir Imam, Advocate.....For appellant.

Mr. Muhammad Jan, District Attorney.....For respondents.

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE NOTIFICATION NO. SO(E)P&D/3-1/REG:/PROJECT/2019 DATED 14.03.2019 UPTO THE EXTENT THAT APPELLANT IS ENTITLED FOR BPS-17 WHILE HIS REGULARIZATION WAS MADE IN BPS-16 AND REPRESENTATION OF THE APPELLANT WAS ALSO TURNED DOWN VIDE ORDER DATED 21.05.2021 WHICH IS AGAINST THE LAW AND RELEVANT RECORD.**

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**CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Through this single judgment this appeal and the connected service appeal No. 7041/2021 titled "Sami Ur Rehman versus The Government of Khyber Pakhtunkhwa through the Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat, Peshawar and others" are decided as both are regarding the same subject matter and can conveniently be decided together.

2. Brief facts gathered from the memo and grounds of appeals are that the appellants were appointed as Research Assistant (BPS-17) in the Urban Policy

Unit Project vide order dated 22.05.2014; that the Provincial Government promulgated Regularization Act in 2018 for regularizing various project employees and in the schedule the project of the appellants were also included at serial No.4. The Finance department after the promulgation of Act, also created the posts of appellant in BPS-17 vide memo dated 11.06.2018. Even in the budget book (2017-18 and 2018-19) for P&D Department (UPU) the posts of Research Assistant have been shown in BPS-17. Moreso, in undertaking, taken from the appellants have been shown as BPS-17 employees; that the appellants were astonished to see their regularization in BPS-16 instead of BPS-17 in the regularization notification dated 14.03.2019, therefore, they filed an appeal for redressal of their grievances, but no heed was paid; that the appellants filed writ petition No. 3292-P/2019 before the Peshawar High Court, Peshawar, which was disposed of with the direction to the respondents to decide representations of the appellants within 45 days; that the respondents upon the directions of the Peshawar High Court, Peshawar, decided and the same was turned down vide order dated 21.05.2021, hence, the instant service appeals.

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 defence setup was a total denial of the claim of the appellant.

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



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5. Both the appellants have filed appeals under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Notification No. SO(E)P&D/3-1/Reg:/Project/2019 dated 14.03.2019 upto the extent that appellant is entitle for BPS-17 while his regularization was made in BPS-16 and representation of the appellant was also turned down vide order dated 21.05.2021.

6. Through these appeals, the appellants have made the following prayer:

"On acceptance of this appeal the regularization of appellants in BPS-16 instead of BPS-17 as Research Assistant as illegal, unlawful, against the spirit of fair play, equity and principle of legitimate expectancy, locus poenitentiae, therefore, such relegation to BPS-16 in the Regularization Notification is not sustainable and ineffective upon the rights of appellant for regularization in BPS-17. Direct the respondents to issue amended/corrected regularization notification of appellants as BPS-17 and change their designation as Research Officer or Assistant Director Planning with all back and consequential benefits. Any other remedy which this august court deems appropriate may also be awarded in favour of the appellants"

7. The appeals and prayer show that the appellants somehow or the other are seeking entitlement to hold the post in Grade-17, whereas Section-4 clause (b)(i) hits the prayer of the appellants. The relevant provision is reproduced below:

"4. Appeal to Tribunals---(b)... No appeal shall lie to a Tribunal against an order or decision of a departmental authority determining---  
(i)... the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade".

8. We also derive wisdom from the judgment of the august Supreme Court of Pakistan reported as PLD 1997 Supreme Court 382 titled "Dr. Ahmad Salman Wairs, Assistant Professor, Services Hospital Lahore versus Dr.

Naeem Akhtar and 5 others" wherein the august Supreme Court of Pakistan was pleased to hold as under:

"15. The question which now arises for consideration is, whether an appeal by the appellant before the Tribunal in these circumstances was competent under the law. While discussing the scope of an appeal under section 4 of the Act, we pointed out that one of the jurisdictional requirements of such an appeal is, that it must be filed by a civil servant as defined in the Act. Another jurisdictional requirement of such an appeal is, that the grievance of the aggrieved civil I F -? servant must relate to a final order of departmental authority whether original or appellate. In the case before us, the appellant was a candidate for the post of Assistant Professor of Urology alongwith Dr. Naeem and Dr. Sahu before the Commission. The latter mentioned gentlemen were selected and recommended G for appointment by the Commission while the appellant was not selected. The appellant having applied but not selected for the post could not acquire the status of a civil servant within the meaning of the Act. He was, therefore, in our view, not entitled to file an appeal before the Tribunal. Apart from it, the appellant; besides questioning the appointments of Dr. Naeem and Dr. Sahu by the Government, had also challenged the selection/recommendation by the Commission of Dr. Naeem and Dr. Sahu, for the post of Assistant Professor of Urology, which would not be brought under challenge before the Tribunal in a service appeal as the above action of the Commission did not fall within the category of the final order of a departmental authority, whether original or appellate. In the case of Irshadur Rehman v. Government of Pakistan (1993 PLC (C.S.) 39), the petitioner was serving as Upper Division Cleric in the Income-tax Department. The petitioner directly applied for recruitment to the post of Inspector in the Income-tax Department. Five candidates including the petitioner and respondent No.4 in that case passed the written test. Petitioner also passed viva v test alongwith the two candidates but respondent No.4 fail. The petitioner filed a Constitution petition before the High Court of Sindh seeking declaration that the appointment of respondent No.4 was without lawful authority and prayed for a direction that the authorities may be directed to appoint the petitioner as Inspector. The jurisdiction of the High Court was challenged on the ground of bar of jurisdiction under Article 212 of the Constitution. A learned Division Bench of the High Court of Sindh repelled the contention as follows,--



13. This brings us to the contention of the learned Advocate for the respondents with regard to the bar of jurisdiction under Article 212 of the Constitution. Sub-Article (1) of the aforesaid Article provides that notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act provide for the establishment of torte by more administrative Courts or Tribunals to exercise jurisdiction in respect of the matters mentioned in clauses (a), (b) and (c). Clause (a) pertains to matters relating to the terms and conditions of persons who are or have been in the service of Pakistan, including disciplinary matters. Sub Article (2) whereof, so far as relevant, reads as under:

'Notwithstanding anything hereinbefore coned, where any administrative Court or Tribunal is established under clams (1), no other Court shall grant an injunction, a y order or entertain any proceeding in respect of any matter to which the jurisdiction of such administrative Court or Tribunal extends-

The Service Tribunal has been established under section 8 of the Service Tribunals Act, 1973 (LXX of 1973). Subsection (2) of the said section 8 provides that the Tribunal shall have exclusive jurisdiction in respect of matters related to the terms conditions of service of civil servants, including discipline matters.

Section 4 thereof provides that any civil servant aggrieved by any final order whether original or appellant, made by departmental authority, in respect of any of the terms and conditions of his service, may within the ' specified time prefer an appeal to the Tribunal.

14. It is thus seen that subsection (2) of section 3 and section 4 of the Service Tribunals Act confer exclusive jurisdiction on the Tribunal in respect of matters relating to the terms and conditions or service of civil servants in consonance with clause (a) of Article 212(1) which has invested the Legislature with powers to create Tribunals to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of persons who are or have been in the service of Pakistan. The jurisdiction of the other Courts is barred in respect of matters relating to (a) the terms and conditions of. service and (b) terms and conditions of service of civil servants, i.e. the persons who are or have been in the service of Pakistan.

For attracting the aforesaid bar in exercise of jurisdiction under Article 199 of the Constitution by the High Courts, it is to be first shown that the petitioner is a civil servant and that the dispute relates to the terms and conditions of his service. . unless the aforesaid two conditions co-exist, the provisions relating to the ouster of jurisdiction will not be attracted. Reference in this regard may be made to

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the recent decision reported in 1991 SCMR 1041 (I.A. Sherwani and others v. The Government of Pakistan through Secretary, Finance Division and others), wherein the question of ouster of-jurisdiction of the Courts, under Article 212 of the Constitution of the Islamic Republic of Pakistan came up for consideration, which has been answered as under:

'From the above-quoted Article 212 of the Constitution and section 4 of the Act, it is evident that the jurisdiction of the Courts is excluded only in respect of the cases in which the Service Tribunal under subsection (1) of section 4 has the jurisdiction. It must, therefore, follow that if the Service Tribunal does not have jurisdiction to adjudicate upon a particular type of grievance, the jurisdiction of the Courts remains intact.'

9. In view of the above, these appeals are found not maintainable and are therefore, dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19<sup>th</sup> day of July, 2024.*



**KALIM ARSHAD KHAN**

Chairman



**RASHIDA BANO**

Member (Judicial)

\*Adnan Shah, PA\*