

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.404/2020

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

**Mr. Raham Zeb, Ex-Deputy Collector (BPS-17), Irrigation Division,
 Abbottabad.**

.... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Irrigation Department, Peshawar.
2. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Social Welfare, Special Education and Women Empower Department, Khyber Khyber Pakhtunkhwa Peshawar.
4. The Chief Engineer Irrigation Department, Khyber Pakhtunkhwa, Peshawar.

.... (*Respondents*)

Mr. Noor Muhammad Khattak
 Advocate ... For appellant

Mr. Muhammad Jan
 District Attorney ... Forrespondents

Date of Institution.....18.12.2019
 Date of Hearing.....11.07.2024
 Date of Decision.....11.07.2024

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 respondents may
 kindly be directed to grant/allowed pay fixation and count**




the previous service of the appellant rendered in Social Welfare Department towards Irrigation Department in light of FR-22 and Article 420 of the Civil Service Regulations. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of appellant.”

2. Brief facts of the case are that the appellant initially appointed as Assistant (BPS-11) in the Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa Peshawar vide order dated 23.06.1987. In the meanwhile, respondent No.4 advertised the post of Zilladar accordingly the appellant applied for the said post through proper channel and after participated in the written test and interview he was appointed vide appointment letter dated 30.05.1991. He was relieved from the social welfare department and took the charge of the post of Zilladar. In the year 1993, he was promoted to BPS-14 and was further promoted to the post of Deputy Collector (BPS-17) in the year 2012. He was retired from service upon attaining the age of superannuation vide notification dated 17.01.2019 but without pay fixation and counting of his previous service rendered in the Social Welfare Department. Feeling aggrieved, he filed departmental appeal, which was not responded to, 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.

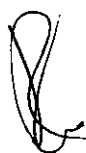
4. We have heard learned counsel for the appellants and learned District

 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 Assistant (BPS-11) in the Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa, Peshawar vide order dated 23.06.1987. The respondent No.4 advertised posts of Zilladar accordingly the appellant applied for the said post through proper channel and after participated in the written test and interview the appellant was appointed as Zilladar vide appointment order dated 30.05.1991. Later on the appellant was promoted to the post of (BPS-14) by the respondent department vide order dated 13.03.1993, where after the appellant was further promoted to the post of Deputy Collector (BPS-17) vide order dated 03.07.2012.

7. Appellant through instant appeal requested for counting of his previous service rendered as Assistant (BPS-11) in Social Welfare, Special Education and Women Empowerment Department, Khyber Pakhtunkhwa, Peshawar for the purpose of pay fixation. It is evident from order of appointment of appellant in the respondent department dated 30.05.1991 that appellant was appointed in (BPS-3), which offer of appointment was accepted by the appellant at that time without raising any objection, after acceptance of offer of appointment appellant started working there and was promoted to BPS-14 as officiating Zilladar vide order dated 13.03.1993 which promotion was actualized by the appellant.



8. Respondent/department refused pay fixation to the appellant on the ground that under the rules pay protection and fixation is allowed when a person apply for and appointed to a post of same or higher grade but pay of the same is less than the old one, but there is no provision of fixation and protection of pay of higher grade into lower grade, in the instant case the appellant applied for lower grade i.e. BPS-3 and leave higher grade BPS-11. Therefore, in our humble view appellant is rightly not considered for pay protection. Appellant kept mum and awakened after deep slumber of 27 years and agitated that in the advertisement post of Zilladar was mentioned as BPS-14 and not of BPS-03. Now after availing appointment and promotion, he is estopped by his conduct to challenge this at belated stage.

9. For what has been discussed above, we are unison to dismiss the appeal having no force in it. Costs shall follow the event. Consign.

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


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

ORDER

11.07.2024

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 are unison to dismiss the appeal having no force in it. 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 11th day of June, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)