

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL No.876/ 2023

Arif Khan, Ex Driver, Assistant to Commissioner Office, Abbottabad.

Appellant

VERSUS

4. Government of Khyber Pakhtunkhwa through Secretary Law, Parliamentary Affairs and Human Rights Department, Peshawar.
5. Commissioner Hazara Division.
6. District Account Officer, Abbottabad.

Respondents

INDEX

| S. No. | Documents | <u>Page No./</u> <u>Annexure</u> |
|---------------|--|---|
| 1 | Joint Parawise comments. | 1-3 |
| 2 | Affidavit. | 4 |
| 3 | First Appointment Order of appellant. | 5 |
| 4 | Termination Order of appellant. | 6 |
| 5 | Fresh Appointment Order of appellant being Sacked employee. | 7 |
| 6 | Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012. | 8-10 |
| 7 | Letter of District Comptroller of Accounts, Abbottabad. | 11-12 |
| 8 | Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021. | 13 |
| 9 | Order bearing No. CHD/ Estb/1/8/3836-44, dated: 09.03.2021 from the Office of the Commissioner Hazara Division, Abbottabad. | 14 |
| 10 | Letter No. Lit./1/1/(A) 11109-12, dated: 28.09.2022 from the Office of the Commissioner Hazara Division, Abbottabad. | 15 |
| 11 | Order Sheet, dated: 29.09.2022 of Honourable Divisional Bench of Peshawar High Court, Abbottabad Bench. | 16 |
| 12 | Letters from the office of the Commissioner Hazara Division, Abbottabad to the office of the District Accounts Officer, Abbottabad / District Comptroller of Accounts, Abbottabad. | 17-19 |

Dated: 06/05/24


Deponent

29-5-24
S.B A. Abaah

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

SERVICE APPEAL No.876/ 2023

Arif Khan, Ex Driver, Assistant to Commissioner Office, Abbottabad.

Appellant: Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 12562

Dated 6/5/24

1. Government of Khyber Pakhtunkhwa through Secretary Law,
Parliamentary Affairs and Human Rights Department, Peshawar.
2. Commissioner Hazara Division.
3. District Accounts Officer, Abbottabad.

Respondents

SERVICE APPEAL UNDER SECTION-4 OF KP SERVICE TRIBUNAL ACT 1974.

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.2.

Respectfully Sheweth,

Parawise comments are as under:

Preliminary objections:

1. That, the appellant has got no locus standi and cause of action to institute the present service appeal.
2. That, the service appeal in hand is not maintainable.
3. That, the appellant has not come to this honourable court with clean hands and there is misrepresentation of facts.
4. That, the service appeal in hand is badly time barred.
5. That, the service appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
6. That, said service appeal of the appellant is violation of the settled principle "No Work, No Pay". Therefore, it is huge financial loss of Government exchequer.

ON FACTS:

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.

5. Incorrect. Date of birth of the appellant is 02.05.1962 and he was appointed as Driver (BPS-4) in the office of the Commissioner Hazara Division, Abbottabad on 15.7.1996 (F/5) and was terminated from Government Service on 19.5.1997 due to irregular appointment, (F/6). Length of service from 15.7.1996 to 19.5.1997 is 10 months. Due to Khyber Pakhtunkhwa Sacked Employees Act 2012 and in pursuance of Peshawar High Court, Abbottabad Bench's judgement, dated: 24.05.2016, appellant was appointed as Driver (BPS-6) on 22.02.2018, (F/7). Second period of service (fresh appointment) from 22.02.2018 to 01.05.2022 (date of superannuation) is 4 years, 2 months and 10 days. Total length of service of the petitioner (10 months of first time appointment and 4 years, 2 months and 10 days of second time fresh appointment) is 05 years 10 days. Petitioner has less than 10 years service in his credit. According to Section-5 of Khyber Pakhtunkhwa Sacked Employees Act, 2012, sacked employees shall not be entitled to claim seniority and other back benefits and appointment of sacked employee will be considered as fresh appointment. Consequently, appellant has 4 years, 2 months and 10 days service in his credit. Therefore, petitioner is not fulfilling required minimum length of Government service for financial pensionary benefits. In this regard, copies of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 and letter of Office of the District Comptroller of Accounts, Abbottabad have been annexed as "8-10" and "11-12" respectively. Furthermore, according to Section-3 (1) of the Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021, The service of a civil servant does not qualify for pension unless it conforms to the following conditions: (a) the service shall not be less than ten years. Copy of Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021 has been annexed as "13".
6. Incorrect. In compliance with judgement of Honourable Peshawar High Court, Abbottabad Bench, dated: 12.01.2021 in Review Petition No.31-A/2018 in accordance with judgement of Honourable Supreme Court of Pakistan, Islamabad dated: 27.3.2020 in Civil Petition No.468-P,469-P,471-P and 472-P, the services of appellant Mr. Arif Khan, Driver were allowed for the protected period for consideration regarding pensionary benefits, copy of Order bearing No.CHD/Estb/1/8/3836-44, dated: 09.03.2021 issued from the Office of the Commissioner Hazara Division, Abbottabad (respondent No.2) has been annexed as "14". Copy of the said letter also issued to the office of the District Comptroller of Accounts, Abbottabad.

Later on, in compliance with Writ Petition No.506-A of 2022 filed in Honourable Peshawar High Court, Abbottabad Bench, the office of the Commissioner


Hazara Division, Abbottabad (respondent No.2) again complied with directions of the Honourable Court vide letter No. Lit./1/1/(A) 11109-12, dated: 28.09.2022, copy of said letter has been annexed as "15". Copy of the said letter also issued to the office of the District Accounts Officer, Abbottabad (respondent No.3). Therefore, CM No.611-A/2022 had been disposed of, copy of Order Sheet, dated: 29.09.2022 of Honourable Divisional Bench of Peshawar High Court, Abbottabad Bench has been annexed as "16". Hence, respondent No.2 complied with the judgements/orders of the Honourable Courts.

Payment of financial emoluments is responsibility of office of the District Accounts Officer, Abbottabad (respondent No.3). In this regard, Office of the respondent No.2 has made correspondence with the office of the District Accounts Officer, Abbottabad (respondent No.3). Letters addressed to the District Accounts Officer, Abbottabad (respondent No.3) have been annexed as "17" to "19".

REPLY ON GROUNDS:

- a) Pertains to record.
- b) That, respondent No.2 has complied with orders/directions of Honourable Courts.
Payment of financial emoluments of petitioner is the responsibility of office of the District Accounts Officer, Abbottabad (respondent No.3).
- c) No comments.
- d) Pertains to relevant laws.
- e) That, other points, supporting documents and judgements of Honourable Courts etc will be presented before the Honourable Service Tribunal during the court proceedings, as and when required.

In the light of foregoing parawise comments and factual position, it is therefore, humbly prayed that the said service appeal of the appellant being not maintainable may graciously be dismissed with costs.


(Syed Zaheer-ul-Islam Shah)
Commissioner Hazara Division,
Abbottabad
(Respondent No.2).

Dated: / / .

4

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR.**

SERVICE APPEAL No.876/ 2023

Arif Khan, Ex Driver, Assistant to Commissioner Office, Abbottabad.

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Law,
Parliamentary Affairs and Human Rights Department, Peshawar.
2. Commissioner Hazara Division.
3. District Accounts Officer, Abbottabad.

Respondents

Affidavit

I, Syed Zaheer-ul-Islam Shah, Commissioner Hazara Division, Abbottabad (respondent No.2) do hereby solemnly affirm that contents of the parawise comments are true to the best of my knowledge and nothing has been concealed by this Honourable court.

It is further stated on oath that answering respondent neither has been placed ex-parte nor his defense has been struck off/cost.

Dated:



25/4/2024

Syed Zaheer- ul-Islam Shah
Commissioner Hazara Division,
Abbottabad
(Respondent No.2)

O R D E R.

The following are hereby appointed as Drivers (BPS-4) in the Offices as shown against their names with immediate effect:-

| <u>S.No.</u> | <u>Name</u> | <u>Place of appointment.</u> |
|--------------|---|---|
| 1- | Mr. Arif Khan S/O Ali Bahadur Khan, Post Office, Nawanshehr, Tehsil & District, Abbottabad. (against the vacant post). | Commissioner's Office Hazara Division, A'Abad. |
| 2- | Mr. Shoukat Ali S/O Saïd Ahmed House No. 1996, Mall Road, Gami Adda, Karim Pura, Tehsil & District, Abbottabad. (against the post fallen vacant due to termination of Mr. Sultan Khan). | Divisional Planning Cell Hazara Division, A'Abad. |

2. Their terms and conditions are enumerated below:-

- a) The appointment of the persons concerned will be purely on temporary basis and subject to regularization by the Departmental Promotion/Selection Committee in its meeting at appropriate time.
- b) The appointees will have to produce a Medical Certificate from the Medical Superintendent, DHQ Hospital, Abbottabad.
- c) The appointees will be placed under probation for a period of two years. If the conduct during the probation period is found unsatisfactory, their services shall be terminated/without assigning any notice.
- d) In the case the appointees fail to report for duty within fifteen days of issue of this order, it will be presumed that they are no more interested in the job and their appointment order shall stand cancelled.
- e) The appointees will be governed by the Govt. Servants Rules as are prevalent and to be framed from time to time.
- f) The appointees will produce Character Certificates from two notables not related to them.

BY ORDER
COMMISSIONER,
HAZARA DIVISION, ABBOTTABAD.

No. E/2(10)77/7751-58 / Dated A'Abad the 15/7/1996.

Copy to:-

1. The Section Officer (Estt.) Planning, Environment & Development Department, Peshawar.
2. The Assistant Chief (Dev) Divisional Planning Cell, Hazara Division, Abbottabad.
3. The District Accounts Officer, Abbottabad.
4. Officials concerned for compliance.
5. P.Fs of Officials concerned.

FOR COMMISSIONER,
HAZARA DIVISION, ABBOTTABAD.

A. H. H. H.
Amint

Annex 13
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OFFICE OF THE COMMISSIONER, HAZARA DIVISION, ABBOTTABAD.

O R D E R

In pursuance of the Govt. of NWFP, Revenue Department, Peshawar orders bearing No. B102-B/Admn:VI dated 3.5.1997, the services of the following officials irregularly appointed in this office are hereby terminated with immediate effect:-

| S.No. | NAME OF OFFICIAL | APPOINTED AS | ORDER NO. |
|-------|---|---|---|
| 1- | Mr. Mohammad Rustom S/O Lal Khan, Resident of Vill: Sarbhana, Tehsil & Distt. Abbottabad. | Deheshti (BPS-1) | E/2(14)/654 dated 3.9.7 |
| 2- | Mr. Mohd Asif Khan S/O Ali Bahadur P.O. Nawansher, Abbottabad. | Driver (BPS-4) | E/2(10)77/7 dated 15.7. |
| 3- | Mr. Shaukat Ali S/O Said Ahmed H.No. 1996, Ball Road, Gummi Adda, Karimpura, Abbottabad. | (Driver) (BPS-4) (Divl: Planning Cell: Hazara) | -do- |
| 4- | Mr. Chanzeb S/O Aurangzeb, Resident of Khoka Kenal, Abbottabad. | Mali (BPS-1) | E/2(13)/77/ 17029-33 da 21.10.1996. |

By order

COMMISSIONER,
Hazara Division, Abbottabad.

No. E/2(45)/77/ 6256-62 /Dt. Abbottabad 19 /5/97.

Copy to:-

- 1- The District Accounts Officer, Abbottabad.
- 2- The Assistant Chief, Divisional Planning Cell, Hazara Division, Abbottabad.
- 3- Accounts Branch (Local)
- 4- Officials concerned.
- 5- File of Officials concerned.

For
COMMISSIONER,
Hazara Division, Abbottabad.

Attested
U.G. 11/3

Attested
S.M. Ansari



OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD

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No: CHD /Estb/ 1/2/ 1764-67
Dated 2/12/2018

ORDER:

In the light of Khyber Pakhtunkhwa, Sacked Employees Act 2012 and in pursuance of High Court Peshawar Bench Abbottabad Judgment dated 24/05/2016; Mr. Arif Khan S/o Al -Bahadur Khan R/o Nawansher, near Illyasi Mosque, Abbottabad, Ex-employee of this office is hereby appointed as driver (BPS-6) with immediate effect against the vacant post on the following terms and conditions.

Term and Conditions:

1. Good behavior/conduct.
2. Production of age and health certificates from the Medical Superintendent, DHQ Hospital.
3. He will have no right of claiming seniority in his cadre.
4. The Period between his termination and his appointment order shall not be counted for any service benefits it and nor he will claim such as.
5. His services will be governed by the rules specified for his cadre employee and the above act.

Sd/xxx

Commissioner
Hazara Division Abbottabad

Endst: Even No & Date:

Copy for information and necessary action is forwarded to the:

1. District Comptroller of Accounts, Abbottabad.
2. The Account Officer of this office.
3. Mr. Arif Khan S/o Al -Bahadur Khan R/o Nawansher, near Illyasi Mosque, Abbottabad.
4. PS to Commissioner, Hazara Division.

Assistant to Commissioner (Rev/GA)
Hazara Division Abbottabad

*Attested
to m on f*

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**THE KHYBER PAKHTUNKHWA
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.**

(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

*[first published after having received the assent of the Governor of
the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa
(Extraordinary), dated the 20th September, 2012].*

**AN
ACT**

*o provide relief to those sacked employees in
the Government service, who were dismissed,
removed or terminated from service, by
appointing them into the Government service.*

WHEREAS it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and were dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on various grounds;

WHEREAS the Federal Government has also given relief to the sacked employees by enactment;

AND WHEREAS the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest;

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.

(2) It shall apply to all those sacked employees, who were holding various civil posts during the period from 1st day of November, 1993 to 30th day of November, 1996 (both days inclusive).

(3) It shall come into force at once.

2. Definitions.— In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say,-

(a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;

*Asst. Secy
Govt. of K.P.*

- (b) "Department" means the Department and the Attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District Offices working thereunder;
- (c) "Government" means the Government of the Khyber Pakhtunkhwa;
- (d) "Prescribed" means prescribed by rules;
- (e) "Province" means the Province of the Khyber Pakhtunkhwa;
- (f) "rules" means the rules made under this Act; and
- (g) "Sacked employee" means a person who was appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments;

3. **Appointment of sacked employees.**--- Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:

Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:

Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority.

4. **Age relaxation.**--- The period during which a sacked employee remained dismissed, removed or terminated from service, till the date of their appointment shall be deemed to have been automatically relaxed and there shall be no further relaxation under any rules for the time being in force.

✓ 5. **Sacked employees shall not be entitled to claim seniority and other back benefits.**--- A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.

*Advised
S.M. Durrani*

6. **Preference on the basis of age.**--- On the occurrence of a vacancy in the respective cadre of the concerned Department of the sacked employee against the thirty percent available share, preference shall be given to the sacked employee who is older in age.

7. **Procedure for appointment.**---(1) A sacked employee, may file an application, to the concerned Department within a period of six months from the date of commencement of this Act, for his appointment in the said Department:

Provided that no application for appointment received after the due date shall be entertained.

(2) The concerned Department shall maintain a list of all such sacked employees whose applications are received under sub-section (1) in the respective cadres in chronological order.

(3) If any vacancy occurs against the thirty percent available share of the sacked employee in any Department, the senior in age from such sacked employee shall be considered by the concerned Departmental Selection Committee or the District Selection Committee, as the case may be, to be constituted in the prescribed manner, for appointment:

Provided that no willingness or response is received within a period of thirty days, the next senior sacked employee shall be considered for appointment.

(4) The Concerned Departmental Selection Committee or District Selection Committee, as the case may be, will determine the suitability or eligibility of the sacked employee.

(5) If no sacked employee is available against thirty percent vacancy reserved in respective cadre in a Department, then the post shall be filled through initial recruitment.

8. **Removal of difficulties.**--- If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister Khyber Pakhtunkhwa may issue such order not inconsistent with the provision of this Act as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from coming into force of this Act.

9. **Act to override other laws.**---Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have overriding effect and the provisions of any other law or rules to the extent of inconsistency to this Act, shall cease to have effect.

10. **Power to make rules.**--- Government may make rules for carrying out the purposes of this Act.

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**Office of the
District Comptroller of Accounts,
Abbottabad**

Phone & Fax: 0992-9810351

No. S 4049 DCA/ATD/2021-22

Dated: 26.01.2022

The Accountant General,
Khyber Pakhtunkhwa,
Peshawar.

[Handwritten signature]
[Handwritten initials]

[Handwritten initials]

Subject:-

COUNTING OF SERVICE FOR THE PROTECTED PERIOD FOR PAYMENT OF PENSIONARY BENEFITS.

Memo.

Kindly refer to the self contained Order of Commissioner Hazara Division Abbottabad bearing No. CHD/Esth/1/8/3836-44 dated: 09.03.2021 regarding the captioned above (Copy Attached).

The brief service history of Mr. Arif Khan Driver (BPS-6) is summarized as under

| S.No | Particulars | From | To | Qualifying Service |
|------|--|------------|--|------------------------------|
| 1. | 1 st period of Service | 18.07.1996 | 18.05.1997 | 10 Months |
| 2. | Termination period | 19.05.1997 | 02.02.2018 | Nil |
| 3. | 2 nd period of Service (Fresh Appointment) | 22.02.2018 | 02.05.2022 (Date of Superannuation) | 4 years - 2 Months - 10 days |

Therefore, this office is of the view that on attaining the age of superannuation i.e 02.05.2022 the net qualifying service of the official will be 05 years & 11 days. Accordingly gratuity for each completed year of service would be paid as per rule and in light of the verdict of Peshawar High Court Abbottabad Bench dated 12/01/2021 "counting of services for the protected period for payment of pensionary benefits" (Copy Attached)

While, the counting of termination period as qualifying period (Protected period for payment of pensionary benefits) is contradictory with the below detailed standing rules as well as verdict of the august court under reference.

Section 5 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 provides "A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment"

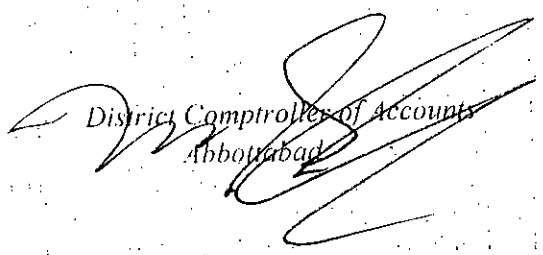
Under the provisions of the Rule (3) of the Khyber Pakhtunkhwa Civil Servant Pension Rules, 2021 "The past services of a civil servant, for the purpose of pension, shall not be counted in the following cases (b) removal or dismissal from service.

While under the provision of Rule 7 of the Khyber Pakhtunkhwa Civil Servant Pay Revision Rules and Allowances "the increment in the Basic Pay Scales shall fall due on 1st of December, following completion of at least six months service at stage in the relevant Basic Pay Scales"

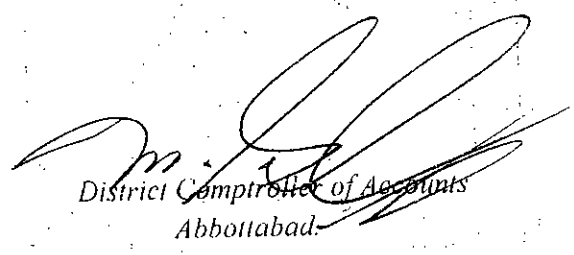
[Handwritten signature]

Under the provision of Rule (1) of the Khyber Pakhtunkhwa Civil Servant Pension Rules, 1971 "The Services of Civil Servant does not qualify for pension unless it conforms to the following conditions (a) the service shall not be less than 10 years."

In light of the above narrated facts it is therefore requested that necessary direction regarding the stance of this office in the matter or otherwise may be issued to save loss to the public exchequer please.


District Comptroller of Accounts
Abbottabad

1) ✓ Copy for information to Commissioner Hazara Division Abbottabad with reference to his letter bearing No. CHD/Estb/1/8/14473-75 dated 26.10.2021.


District Comptroller of Accounts
Abbottabad

Attended
only

Chapter-II
Service Qualifying for Pension

3. Conditions of qualification.---(1) The service of a civil servant does not qualify for pension unless it conforms to the following conditions:

- ✓ (a) the service shall not be less than ten years;
- (b) the service must be paid by Government from the Provincial Consolidated Fund;
- (c) the service of a probationer who is subsequently confirmed in a permanent post without interruption qualifies for pension;
- (d) the time spent by a civil servant in approved training shall count as service qualifying for pension; however, the period of training before actual appointment to a civil post shall not count for pension;
- (e) all leave, other than extra ordinary leave counts as qualifying service for the purpose of pension;

Explanation: The period of extraordinary leave shall not be treated as qualifying service for pension but only as a bridge between the two periods of qualifying service.

- (f) the period of suspension, followed by reinstatement, shall be deemed to have been the period as qualifying for pension, regardless of the fact whether the civil servant was or was not allowed full pay and allowances for the period of suspension;
- (g) time spent by a civil servant on deputation in another Government or autonomous body working under Government;
- (h) military pensionable service which ceases before a pension has been earned in respect of it, when followed by civil pensionable service, counts as part of such service;
- (i) if a permanent post, on which a civil servant holds a lien, is abolished, under circumstances entitling him to get a compensation pension or gratuity, his service thereafter in a temporary post, under Government, qualifies for pension; and
- (j) for the purpose of grant of pension for the service in an autonomous or semi-autonomous body, the pay drawn and the effective service, rendered by a civil servant in an autonomous or semi-autonomous body, the authorized capital of which is wholly subscribed by the Federal or Government in a post, appointment to which is by law, required to be made and salary of which is required to be fixed by the Federal Government or Government shall be treated as pay

*Attested
Signature*

REGISTERED MAIL



OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD

No. CHD/Estb/1/8/ 3226-44
P.H.# 0992-9310461, Fax No. 9310265
Email: establishmentchd@gmail.com

Dated 9/3/2021

ORDER:

Whereas Mr. Arif Khan Driver (BPS-6) of this office filed a Review Petition No. 31-A/2018 before Honorable Peshawar High Court Abbottabad Bench for review of the judgment & order of the Peshawar High Court Abbottabad Bench dated 06-9-2018 wherein the COC No. 44-A/2016 was dismissed to the extent of other petitioners and petitioner Mr. Arif was directed to approach the competent forum for the grievances.

And whereas the above official was initially appointed as a Driver (BPS-06) in the office of the Commissioner, Hazara Division vide order No. E/2 (10)77/51-58 dated: 15/07/1996. Later on he was terminated from services vide Order No. E/2(45)/77/6056-62 dated: 19/05/1997. Mr. Arif Khan filed a writ petition No.546-A/2013 before Peshawar High Court Abbottabad Bench which was decided on 24/05/2016. In pursuance of ibid judgment of Peshawar High Court Abbottabad Bench and in the light of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act - 2012, Mr. Arif Khan was appointed as Driver (BPS-06) vide order No. CHD/Estb/1/2/1764-67 dated: 03/02/2018.

And whereas Mr. Arif Khan, Driver filed a review petition before Peshawar High Court Abbottabad Bench bearing No. 31-A/2018. The Peshawar High Court Abbottabad Bench disposed of the ibid petition on 12/01/2021 in accordance with Judgment of august Supreme Court of Pakistan dated: 27/03/2020 passed in civil petition No. 468-P, 469-P, 471-P and 472-P with the following observations:

"It is however observed that the petitioners will be allowed counting of their service for the protected period for payment of pensionary benefits"

Now therefore, in the light of judgment of Peshawar High Court Abbottabad Bench dated: 12/01/2021, the services of Mr. Arif Khan, Driver (BPS-06) are allowed for the protected period for consideration regarding pensionary benefits.

By order
Commissioner
Hazara Division, Abbottabad

Copy forwarded to:

- 1- The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
- 2- Additional Registrar, Peshawar High Court Abbottabad Bench with reference to letter No. 30 to 31 dated: 19/01/2021.
- 3- District Comptroller of Accounts, Abbottabad.
- 4- Secretary to Commissioner, Hazara Division Abbottabad.
- 5- PS to Commissioner Hazara Division.
- 6- Assistant Budget & Accounts, of this office for necessary action.
- 7- Personal file.
- 8- Official concerned.

(Assad Mehmood Lodhi)
Assistant to Commissioner (Rev/GA),
Hazara Division, Abbottabad.

MOST IMMEDIATE/COURT MATTER



OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD

No.Lit./1/1/(A) 11109-12
Dated: 28.09.2022

To

The Additional Advocate General,
Government of Khyber Pakhtunkhwa,
Abbottabad.

Subject: WP NO.506-A OF 2022.

ARIF KHAN,

-----Petitioner

VERSUS

**GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH
SECRETARY LAW ETC.**

-----Respondents

Sir,

I am directed to refer to the Additional Registrar, Peshawar High Court, Abbottabad Bench letter No.694,dated:20.5.2022 on the subject cited above and to state that in compliance with order of Honourable Peshawar High Court, Abbottabad Bench in Review Petition No.31-A/2018, dated:12.01.2021, the Commissioner Hazara Division, Abbottabad (respondent) has allowed the protected period of Mr.Arif Khan, driver for consideration regarding pensionary benefits, copy of the order has been annexed for ready reference. In this regard, correspondence was made with District Accounts Officer, Abbottabad (respondent).

In compliance with order of Honourable Peshawar High Court, Abbottabad Bench, dated:17.05.2022 in Writ Petition No.506-A/2022, the Commissioner Hazara Division, Abbottabad (respondent) referred the subject case to the District Accounts Officer, Abbottabad (respondent) for implementation of the Honourable Peshawar High Court, Abbottabad Bench's direction dated: 17/05/2022, as the grant of pensionary benefits is the jurisdiction of concerned Accounts Office, copies of court order dated:17.05.2022 and this office letter No. CHD/Estb/1/8/9839-43,dated:31.08.2022 have been annexed for ready reference, please.

[Signature]
Assistant to Commissioner (Poll/Dev)
Hazara Division, Abbottabad

No. & Date Even.

Copy to the:

1. Learned Additional Registrar, Peshawar High Court, Abbottabad Bench alongwith aforementioned letters with reference to above, please.
2. District Accounts Officer, Abbottabad (respondent), please.
3. PS to Commissioner Hazara Division, Abbottabad.

[Signature]
Assistant to Commissioner (Poll/Dev)
Hazara Division, Abbottabad

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PESHAWAR HIGH COURT,
ABBOTTABAD BENCH
FORM 'A'
FORM OF ORDER SHEET

| | |
|--|--|
| Date of Order or Proceedings | ORDER OR PROCEEDINGS WITH SIGNATURE OF JUDGE/JUDGES |
| 1 | 2 |
| 29.09.2022 | <u>CM No. 611-A/2022</u> |
| <p>Present:- Mr. Muhammad Arshad Khan Tanoli, Advocate for the petitioner.</p> <p>Mr. Sajid-ur-Rehman Khan, AAG for the respondents.</p> <p>***</p> <p><u>WIQAR AHMAD, J.</u>- The order made by this Court has been complied with, in which respect, learned AAG produced order of Commissioner Hazara Division, which is allowed to be placed on record.</p> <p>2. The instant petition has, therefore, achieved its object and same is disposed of accordingly.</p> | |
| <p>JUDGE</p> <p><i>Waqar Ahmad</i></p> <p>JUDGE</p> | |

Attended
Waqar Ahmad



17 J 112
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**OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD**

No: CHD / Estb/ 1/8/ 9839-43
Dated 31/08/2022

To **The District Accounts Officer,
Abbottabad.**

Subject: **WRIT PETITION No. 506-A OF 2022**

I am directed to refer to your letter No. DCA/ATD/16-19 dated: 04/08/2022 on the subject noted above and to state that requisite comments from your office and Accountant General, Khyber Pakhtunkhwa has not been received which are required for execution of the following directions of the August High Court in the subject Writ Petition.

"In the view of peculiar fact and circumstances of case, this Court in the larger interest of Justice treats the present writ petition as departmental appeal and sent it to the respondent No. 2 (Commissioner Hazara Division, Abbottabad) for its decision, in accordance with law, within a period of one month, from receipt of this order. Order is directed to do the needful."

Your attention is invited to this office order No. CHD/Estb/1/8/3836-44 dated: 09/03/2021, vide which this office already disposed of the instant case and no further action is required to be taken by this office. The grant of pensionary benefit is the Jurisdiction of concerned Account Office.

In the light of above scenario, the Commissioner, Hazara Division (Respondent No. 02) has desired to refer the subject case to District Account Officer (Respondent No. 03) for implementation of the August Court's direction ibid dated: 17/05/2022 (copy enclosed).

It is, therefore, requested to please take immediate necessary action and dispose of the subject case in accordance with the Court's directions & this office order No. CHD/Estb/1/8/3836-44 dated: 09/03/2021 under intimation to this office.

Matter may be treated as most urgent/important, please.

130
Attest
Omish

**Assistant to Commissioner (Rev/GA)
Hazara Division Abbottabad**

Endst: Even No & Date:

Copy forwarded for information to the:

1. Additional Registrar, Peshawar High Court, Abbottabad.
2. Accountant General of Khyber Pakhtunkhwa, Peshawar.
3. PS to Commissioner, Hazara Division, Abbottabad.
4. Mr. Arif Khan, Ex Driver, Commissioner Office, R/o Illyasi Masjid, Nawanshehr Town Committee, Tehsil & District, Abbottabad.

OK

**Assistant to Commissioner (Rev/GA)
Hazara Division Abbottabad**



Rejoinder

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**OFFICE OF THE
COMMISSIONER HAZARA DIVISION
ABBOTTABAD**

No: CHD /Estb/ 1/8/12253-55-
Dated 25/10/2022

To

**The District Comptroller of Accounts,
Abbottabad.**

Subject: **WRIT PETITION No. 506-A OF 2022**

I am directed to refer to your office letter No. DCA/ATD/26 dated: 25/10/2022 on the subject cited above and to state that your letter under reference has transpired that the Account Office has done nothing concrete to implement the Judgment of August High Court, Abbottabad Bench dated 12/01/2021 in accordance with the Judgment of August Supreme Court of Pakistan dated: 27/03/2020 passed in Civil Petition No. 468-P, 469-P, 471-P & 472-P (copy enclosed), Order dated: 17/05/2022 (Copy enclosed). & this office order No. CHD/Estb/1/8/3836-44 dated: 09/03/2021 vide which the case has already been referred to your office for its implementation.

As the judgments of honorable High Court/ August Supreme Court are very clear, it is therefore, requested to dispose of the subject case in accordance with the aforementioned Court's orders/directions, to avoid further litigation, please.

Matter may be treated as most urgent being court matter, please.

[Signature]
**Secretary to Commissioner
Hazara Division Abbottabad**

Endst: Even No & Date:

Copy forwarded for information to the:

1. Additional Registrar, Peshawar High Court, Abbottabad.
2. PS to Commissioner, Hazara Division, Abbottabad.

*Attested
[Signature]*

[Signature]
**Secretary to Commissioner
Hazara Division Abbottabad**



No.Lit.1/1(A)/427-32

Dated: 04.01.2024

To

The District Accounts Officer,
Abbottabad
(Respondent No.3).

Subject:

SERVICE APPEAL NO.876 OF 2023

ARIF KHAN IN CASE

-- APPELLANT/PETITIONER

VERSUS

**COMMISSIONER HAZARA DIVISION
ABBOTTABAD**

THROUGH SECRETARY LAW, PESHAWAR -- RESPONDENTS

I am directed to refer to the subject cited above and to enclose herewith a copy of notice, dated:20.12.2023 received from the Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

In this regard, it is stated that vide this office Order, bearing No.CHD/Estb/1/8/3836-44,dated:09.03.2021, the Commissioner Hazara Division, Abbottabad (respondent) had allowed the protected period of Mr.Arif Khan, Ex Driver for consideration regarding pensionary benefits. The subject matter was also dealt vide this office letters No.CHD/Estb/1/8/9839-43,dated:31.08.2022 and letter No. Lit./1/1/(A)11109-12,dated:28.09.2022. Due to which, CM No.611-A/2022 had been disposed of on 29.09.2022, copies of aforementioned correspondence and Order of Honourable Divisional Bench of Peshawar High Court, Abbottabad Bench have been enclosed for ready reference.

I am therefore directed to request you to do the needful at yours end as hearing has been fixed for 22.01.2024 at 8:00 AM in Khyber Pakhtunkhwa Service Tribunal, Camp Court, Abbottabad, please.

Arif Khan
S. Mansoor

**Assistant to Commissioner (Poll/Dev)
Hazara Division, Abbottabad.**

No. & Date Even.

Copy to the:-

1. Learned Registrar, Khyber Pakhtunkhwa Service Tribunal, Judicial Complex (Old), Khyber Road, Peshawar alongwith copies of aforementioned correspondence with reference to above.
2. Learned Additional Advocate General, Khyber Pakhtunkhwa Service Tribunal, Judicial Complex (Old), Khyber Road, Peshawar alongwith copies of aforementioned correspondence with reference to above.
3. PS to the Secretary to Government of Khyber Pakhtunkhwa, Law, Parliamentary Affairs and Human Rights Department, Peshawar.
4. PS to the Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
5. PS to the Commissioner Hazara Division, Abbottabad.

ac

**Assistant to Commissioner (Poll/Dev)
Hazara Division, Abbottabad.**