

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Review petition No.144/2024 in S.A No.1282/2022

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

Engineer Nasir Khan (B.Sc) Civil and 70 others.

.... (Petitioner)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Establishment Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Planning & Development Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Mr. Furqan Shafi (PPS BPS-17) Planning Officer, ST&IT Department, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Fazal Shah Mohmand
Advocate

... Forappellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... Forrespondents

SCANNED
KPST
Peshawar

Date of Institution.....07.02.2024
Date of Hearing.....18.04.2024
Date of Decision.....18.04.2024

JUDGMENT

RASHIDABANO, MEMBER (J): The instant review petition has been instituted under section 7 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 against the judgment/order dated 13.11.2023 of this Hon'ble Tribunal passed in service appeal No. 1282/2022 with the prayer that on acceptance of this review petition the

impugned judgment and order dated 13.11.2023 passed by this Hon'ble Tribunal in


the above mentioned service appeal, may kindly be reviewed, and the service appeal of respondent No.4 may kindly be dismissed with heavy cost.”

2. Brief facts leading to filing of the instant review petition are that the respondent No.4 filed service appeal No. 1282/2022 before this Tribunal challenging the final seniority list dated 25.05.2022 which was allowed in favor of the appellant with direction to respondents to place the appellant at due and proper place in the seniority list. Petitioners alleged that such order is liable to be reviewed.

3. We have heard learned counsel for the petitioner and learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Perusal of record reveals that petitioner through instant review petition seeks review of judgment/order of this Tribunal handed down in Service Appeal No. 1282/202 decided on 13.11.2023 vide which appeal of the appellant was allowed.

5. Learned Deputy District Attorney at the very outset raised the question of jurisdiction and maintainability of the review petition by arguing that review petition is not maintainable. While rebutting arguments of learned Deputy District Attorney, learned counsel for petitioner argued that although there is no provision of review petition in the statute of Khyber Pakhtunkhwa Service Tribunal Act, 1974 but this Tribunal exercised power of review in review petition No. 444/2019 titled “Muhammad Sohail Vs. Government of Khyber Pakhtunkhwa through Chief Secretary” vide judgment/order dated 01.02.2022 and so this is precedent for exercising power of review by this Tribunal.



6. It is admitted fact that no provision of review was provided in the Khyber Pakhtunkhwa Service Tribunal Act, 1974. By no stretch of the imagination, this Tribunal could not guarantee jurisdiction if the statute itself makes no such provision. No doubt, this Tribunal exercised jurisdiction in review petition No. 444/2019 vide judgment dated 01.02.2022 but at the same time there is verdict of supreme Court in clear words that Service Tribunal has got no jurisdiction to entertain review petition. Then in such a situation we under Article 189 of the Constitution of 1973 are duty bound to follow the verdicts of Supreme Court in preference of view of any other from including this Tribunal. Reliance is placed on 1987 SCMR 899 (b) and 2004 PLC (C.S) 527 (b&c) which are given for ready reference;

“(b) S.4- Service Tribunals (Procedure) Rules, 1974-Powers of Service Tribunal-Review-Service Tribunal, held, was not invested with powers to review its on orders under any circumstance---[Review].”

“(b) Power of review cannot be exercise by way of discretion, unless conferred upon a forum by some law or statue.

(c) S.3& 4—Exercise of power of review by Service T—Scope—No such power is conferred upon Service Tribunal as no such provision is available in the Punjab Service Tribunals Act, 1974.”

7. Learned counsel for the petitioner argued that this Tribunal entertained 12(2) petition, provision for which is also not provided by Khyber Pakhtunkhwa Service Tribunal Act, 1974, therefore, this Tribunal has got jurisdiction and power of review on the basis of same analogy in this respect. It is pertinent to mention that Supreme Court in its judgment held that Tribunal has got jurisdiction to entertain petition under in 12(2) CPC but in case of review Supreme Court view is otherwise.



8. For what has been discussed above, we are unison to dismiss the instant review petition being not maintainable. Costs shall follow the event. Consign.

9. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 18th day of April, 2024.*

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KPST
Peshawar


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


ORDER


18.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District for the respondents present.

2. Vide our detailed judgment of today placed on file, the instant review petition is not maintainable, hence dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 18th day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

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