

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.274/2020

Date of presentation of appeal.....12.12.2019
Dates of Hearing.....19.09.2024
Date of Decision.....19.09.2024

Mr. Qaisar Khan, Personal Assistant (BPS-17) (E&A)
Department, Peshawar.....(*Appellant*)

Versus

1. **The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.**
2. **The Secretary Establishment, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Administration, Khyber Pakhtunkhwa, Peshawar.**
4. **The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.**
5. **The Director General Peshawar Development Authority, Peshawar.....(*Respondents*)**

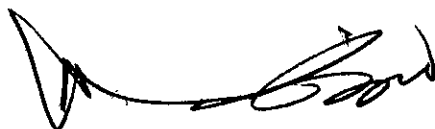
Present:

Mr. Taimur Ali Khan, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR ALLOWING PAY PROTECTION TO THE APPELLANT ON APPOINTMENT FROM ONE POST TO ANOTHER POST IN BPS-12 BEING MADE WITH THROUGH PROPER CHANNEL AND AGAINST THE ORDER DATED 18.11.2019, WHEREBY, THE APPELLANT HAS BEEN REFUSED PAY PROTECTION ON APPOINTMENT AGAINST BPS-12.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as per averments of appeal, are that appellant was appointed as Junior Clerk in the Peshawar Development Authority on 12.01.1982; that later



on he was appointed on the post of Stenographer (BPS-12) in the same office, till 01.02.1988; that the post of Stenographer was advertised in the Establishment Department for which the appellant applied and was appointed through proper channel; that the Finance Department vide Notification dated 04.06.2011 vide which benefits of pay protection had been allowed to the employees of autonomous body provide it has adopted pay scale of the government in toto; that the appellant filed representation for his pay protection from one post to another in BPS-12 but the same was regretted on 18.11.2019, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

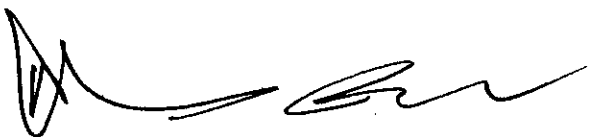
3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

4. 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.

5. It appears that the appellant has a long-standing employment history with the Peshawar Development Authority, having initially joined as a Junior Clerk in 1982 and subsequently appointed as a Stenographer in 1988 through proper channel. The relevant Finance Department Notification dated 04.06.2011 outlines the criteria for pay protection for employees transitioning between posts, specifically requiring adherence to government

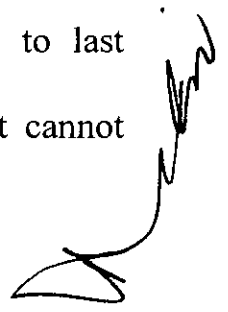
pay scales. The appellant's application for pay protection was submitted based on these provisions; however, it was denied on 18.11.2019 without adequate justification.

6. The appellant has annexed with the appeal an application dated 02.09.2013 submitted to the Secretary to Government of Khyber Pakhtunkhwa, Establishment Department for pay protection in view of letter No.FD(SR-I)12-1/2011 dated 4th June 2011 showing the same to be departmental representation and has also annexed another letter dated 18.11.2019 of the Establishment Department signed by Hazrat Jamal, Section Officer (IV), whereby some application of the appellant was shown to have been regretted. It was then, we summoned the Secretary Establishment alongwith record as to how and why application, made on 02.09.2013, was dismissed after six (06) long years. The Secretary Establishment did not put appearance, however, photocopies of some documents were produced which show that the appellant had after the application made on 02.09.2013 made similar applications on 20.10.2017 and 08.11.2019. But when we perused the written reply of the respondents, those are not only evasive in nature but the respondents have also suppressed these documents as not a single word has been uttered in the reply by the respondents in this respect. The Deputy Secretary and Section Officer could not explain as to why these documents were concealed from the Court because only one representation was placed by the appellant and that is shown to have been made on



02.09.2013 and the subsequent applications appear to us to cover the question of limitation because the regret letter dated 18.11.2019 appears to have been issued in the reply to the last departmental appeal of the appellant made on 08.11.2019. The conduct of the Establishment Department in this case shows that people at the helms of affairs, who had prepared comments and are in possession of the records have deliberately concealed the facts, so that benefit could be extended to the appellant using the shoulders of the Tribunal. This conduct is not appreciable.

7. The appellant has sought benefits of the letter dated 04.06.2011 but he had, for the first time filed application on 03.09.2013, whereas, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appellant had to file representation within thirty (30) days and awaiting ninety (90) days period, he had to file service appeal before the Tribunal. We cannot consider the subsequent representations of 20.10.2017 and 08.11.2019 as there is no concept in the law of subsequent representation. The law provides only one representation which the appellant had filed on 02.09.2013. While the regret letter, which does not contain the date of application of the appellant cannot be said to be in response to the first application of 02.09.2013 rather it could be said to be in response to last representation dated 08.11.2019, therefore, the appellant cannot get benefit of that.



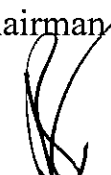
8. The above dates of making representations and filing appeal are beyond the period prescribed in the law and no application for condonation of delay had been filed either with the authority or with this appeal. The appellant has also suppressed the facts and has not placed on file subsequent representations including the last one made on 08.11.2019, which was responded on 28.11.2019 and only response letter has been annexed, so that the Tribunal could be mislead and the appeal could be considered to have been filed within time. Therefore, the appeal in hand being barred by time is dismissed with costs.

9. Before parting we direct that copy of this judgment be sent to the learned Advocate General Khyber Pakhtunkhwa who may bring the judgment in the notice of the worthy Chief Executive of the Province to look into the conduct of the departments showing their non-serious and irresponsible attitude towards defending the interests of the Government in the Court cases. Consign.

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



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

13th Sept, 2024

Learned counsel for the appellant present. Mr. Muhammad Wali, Section Officer on behalf of respondent No. 2 alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned Deputy District Attorney stated that representative of the respondent No. 4 is not present today and due to the deficiency of record, he is not in a position to argue the appeal today. Adjourned. To come up for arguments on 19/09/2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

(Muhammad Akbar Khan)
Member (Executive)

(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

S.A #.274/2020

ORDER

19th Sep. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present. Heard.
2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19th day of September, 2024.*

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Mutazem Shah