

# **BEFORE THE SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 530/2024**

**Mir Azam Khan**

**VERSUS**

**Govt: of Khyber Pakhtunkhwa & Others**

## **I N D E X**

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**DEPONENT**

**Through**

  
**SECTION OFFICER (LIT-II)**

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

**SERVICE APPEAL.NO. 530/2024.**

**MR. MIR AZAM KHAN..... APPELLANT**

**VERSUS**

The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.

Secretary to Government of Khyber Pakhtunkhwa Establishment Department, Civil Secretariat, Peshawar.

Secretary to Government of Khyber Pakhtunkhwa Finance Department, Civil Secretariat Peshawar.

Secretary to Government of Khyber Pakhtunkhwa Planning & Development Department, Civil Secretariat Peshawar.

**..... RESPONDENTS**

**PRELIMINARY OBJECTIONS:**

- 1- That the appeal is not maintainable in its present form.
- 2- That the appellant has got no locus standi and cause of action to file the instant appeal.
- 3- That the appellant did not come to the Tribunal with clean hands.
- 4- That the appeal is not maintainable due to mis-Joinder and non-Joinder of necessary and proper parties.
- 5- That the appellant concealed the material fact from the Honorable Tribunal.
- 6- That the appellant is estopped by his own conduct to file the instant appeal.

**JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS.**

**RESPECTFULLY SHEWETH:**

**FACTS:**

- 1. Pertains to record.
- 2. Pertains to record.
- 3. Pertains to record.
- 4. Pertains to record.
- 5. Pertains to record.
- 6. Pertains to record.
- 7. Pertains to record.
- 8. Pertains to record.
- 9. Pertains to record.
- 10. Pertains to record.

- 11. Pertains to record.
- 12. Pertains to record.
- 13. Pertains to record.
- 14. Pertains to record.
- 15. Pertains to record.
- 16. Pertains to record.
- 17. Pertains to record.
- 18. Pertains to record.
- 19. Correct to the extent that the services of the appellant were regularized under section 3 of "the Khyber Pakhtunkhwa (Regularization of services of employees of Erstwhile Federally Administered Tribal Areas) Act, 2021 with effect from the commencement of the Act i.e. 13-01-2022.
- 20. Correct. The services of the appellant have been regularized with effect from 13-01-2022 in light of the Khyber Pakhtunkhwa (Regularization of services of employees of Erstwhile Federally Administered Tribal Areas) Act, 2021 as explained in Para-19.
- 21. Correct. The appellant stood retire from service with effect from 03-10-2023 on attaining the age of superannuation in light of Planning & Development Department order dated: 12-10-2023.
- 22. Pertains to record.
- 23. Correct. As explain in preceding para the appellant does not fulfill the requisite criteria for eligibility of pension i.e. 10 years regular service. Therefore, his claim for pension was regretted.

**GROUND:**


- A. Incorrect & misconceived. The appellant has been treated in accordance with law, Rules and principles of natural justice hence, Article 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973 have not been violated by the respondents.
- B. Incorrect. The appellant has appealed for grant of pay fixation for the purpose of pension and other emoluments with all back benefits not for promotion.
- C. Incorrect. No discrimination has been committed against the appellant; therefore, the respondents did not violate the principle of natural justice.
- D. Incorrect & misleading. Since the appellant was a project employee of the Government of Khyber Pakhtunkhwa therefore, the prevailing pension Rules i.e. "KHYBER PAKHTUNKHWA CIVIL SERVANTS PENSION RULES, 2021" is applicable on him and as per section 3(1)(a) of the ibid Rules "the service


shall not be less than ten years". However, the appellant has only 01 year & 09 Months regular service at his credit.

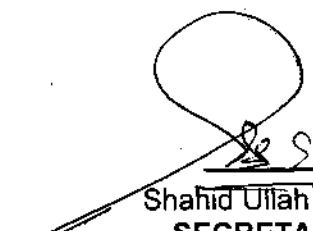
- E. Incorrect & misleading. Interpretation of Article 371- A of C.S.R made by the apex Court; it is concluded that the service rendered on contract followed by regularization could only be counted for pensionary benefits provided that the civil servant has completed qualifying ten years' service independently.
- F. Subject to proof.
- G. As replied in above paras.
- H. Incorrect. Already replied in para "D" above.
- I. Incorrect. Finance Department vide notification dated: 26-09-2019 regularized fixed pay Class-IV employees whereas the services of the appellant were on contract basis under agreement signed with United Nations.
- J. Incorrect. As per policy of the Provincial Government contract/temporary service which has not been regularized/confirmed through legal instrument is not countable for the purpose of pensionary benefits.
- K. No comments. However, the replying respondents seek permission of this Honorable Tribunal to adduce other grounds during final hearing of the case.

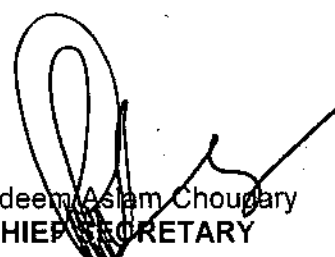
**PRAYER:**

Keeping in view of the above; it is very humbly prayed that the instant Service Appeal of the appellant may graciously be dismissed with cost.

  
**Zulfiyar Alishah**  
**SECRETARY**  
 Govt. of Khyber Pakhtunkhwa,  
 Establishment Department  
 (Respondent No. 02)

  
 Amir Sultan Tareen  
**SECRETARY**  
 Govt. of Khyber Pakhtunkhwa,  
 Finance Department  
 (Respondent No. 03)

  
 Shahid Ullah Khan  
**SECRETARY**  
 Govt. of Khyber Pakhtunkhwa,  
 Planning & Development Department  
 (Respondent No. 04)

  
 Nadeem Aslam Chougary  
**CHIEF SECRETARY**  
 Govt. of Khyber Pakhtunkhwa  
 (Respondent No. 01)

**BEFORE THE SERVICE TRIBUNAL, PESHAWAR**

**SERVICE APPEAL NO. 530/2024**

**MIR AZAM KHAN**

.....**APPELLANT**

**VERSUS**

**Govt: of Khyber Pakhtunkhwa & Others**

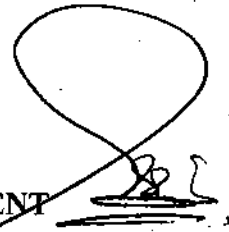
.....**RESPONDENTS**

**AFFIDAVIT**

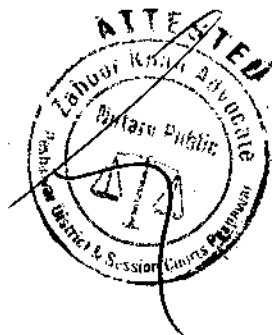
I, Shahid Ullah Khan Secretary, Planning & Development Department do hereby solemnly affirm and declare on oath that the contents of Comment are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal, intentionally.

It is further stated on oath that in this appeal, the answering respondent have neither been placed ex-parte nor their defence has been struck-off/cost.

**DEPONENT**



CNIC No. \_\_\_\_\_  
Cell No. \_\_\_\_\_



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Annex-A



GOVERNMENT OF KHYBER PAKHTUNKHWA,  
PLANNING & DEVELOPMENT DEPARTMENT.

NO. SO(B&A)/P&DD/4-5/2020-21/Misc/101  
Dated Peshawar the 27<sup>th</sup> December, 2023

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Finance Department.

Attention: Section Officer (SR-II).

Subject: - CLARIFICATION REGARDING PROCESSING OF PENSION CASE OF MR. MIR AZAM KHAN, NAIB QASID, KHYBER AREA DEVELOPMENT PROJECT (KADP), SDU, P&D DEPARTMENT.

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith a copy of an application dated nil addressed to the Deputy Secretary (Admn), P&D Department received from Mr. Mir Azam Khan, Ex-Naib Qasid, Khyber Area Development Project, SDU, P&D Department for grant of for release of pensionary benefits along with Leave Encashment, Benevolent Fund, GP Fund & RB&DC Fund.

Brief History of the case is that Mr. Mir Azam Khan was Initially appointed on project post as Naib Qasid on 01.07.1987 in the Spedal Development Unit of Khyber Pakhtunkhwa (Annex-I). After 15 years of service on contract basis, he was transferred to the Khyber Area Development Project through proper channel vide office order dated 07.03.2022 (Annex-II). Recently, his services have been regularized on 30.06.2022 (Annex-III) under the "Khyber Pakhtunkhwa (Regularization of Services of Employees or Erstwhile Federally Administered Tribal Areas) Act, 2021" w.e.f 13.01.2022 and the applicant has rendered 01 year 09 months as regular employee. Now, upon attaining the age of superannuation, Mr. Mir Azam Khan has retired from government service on 03.10.2023 vide Planning & Development Department Order dated 12.10.2023 (Annex-IV). Subsequently, he has requested for pensionary benefits by counting his previous service even though he wasn't a regular employee at that time in light of the Finance Department Notification dated 22.05.2019 and the Finance Department letter dated 26.07.2023 (Annex-V & VI).

In view of above, It is requested that this Department may be guided whether Mr. Mir Azam Khan, Ex-Naib Qasid, KADP, SDU P&D Department is eligible for pension along with other benefits by counting his previous service rendered by him as project employee in light of the Finance Department Notification referred above, please.

Yours Faithfully,

ASSISTANT CHIEF (B&A)

Encl of Even No. & Date:

Copy forwarded for information to the:

1. PS to Secretary, P&D Department.
2. PA to Additional Secretary (Admn), P&D Department.
3. PA to Deputy Secretary (Admn) P&D Department.

ASSISTANT CHIEF (B&A)

Attest  
Ay wal B

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Annex-B

GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar <http://www.finance.gkp.pk>

[facebook.com/GoKRPFD](https://www.facebook.com/GoKRPFD) [twitter.com/GoKRPFD](https://twitter.com/GoKRPFD)

NO.SOSR-III/FD/1-12/2024/Mir Azam Khan

Dated Peshawar the 31.01.2024

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Planning & Development Department.


Subject:-

CLARIFICATION REGARDING PROCESSING OF PENSION CASE OF MR.MIR  
AZAM KHAN, NAIB QASID, KHYBER AREA DEVELOPMENT PROJECT  
(KADP), SDU, P&D DEPARTMENT.

Dear Sir,

I am directed to refer to your letter No.SO(B&A)/P&DD/4-9/2020-21/Misc/101 dated 27.12.2023 on the subject noted above and to state that Finance Department regrets its inability to accede to the request of Administrative Department due the reason that as per pension rules, the prescribed length of service for eligibility of pension is at least 10 years regular service whereas, the Ex-Naib Qasid has only 01 year & 09 months regular service at his credit.

Yours faithfully,

  
(SAID BACHA)  
SECTION OFFICER (SR.II)  
Phone #: 091-9211564

*Attested*

*[Signature]*



(7)

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
PLANNING & DEVELOPMENT DEPARTMENT**

**AUTHORITY LETTER**

Mr. Meher Muhammad, Section Officer (Litigation-II), Planning & Development Department is hereby authorized to attend the court hearing in the case "Service Appeal No: 530/2024 titled " Mir Azam Khan VS Government of Khyber Pakhtunkhwa & Others" on behalf of Secretary P&D Department.

  
**Deputy Secretary (Estt.)  
P&D Department**