

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD.

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Service Appeal No. 7348/2021

Syed Naeem Shah son of Chan Pir Shah, resident of Phagla, Post Office
Attar Shisha, presently Dak Banglow, Mohallah Sainabad, District
Mansehra.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home & T.As Department, Peshawar.
2. Inspector General of Police, Peshawar.
3. District Police Officer, Manehra.
4. District Accounts Officer, Mansehra.(Respondents)

Mr. Hamayun Khan,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

Date of Institution..... 30.08.2021
Date of Hearing.....26.09.2024
Date of Decision..... 26.09.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 05.03.2021, whereby the application for including the past service of the appellant in Special Police Force was not considered. It has been prayed that on acceptance of the appeal, the impugned order might be set aside and the respondents might be directed to include the past service of the appellant rendered in Special Police Force to meet the ends of justice.

02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant served in Special Police Force, District Mansehra since

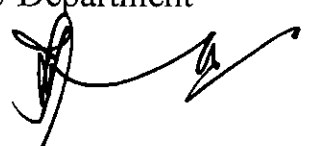


16.05.2014 to 07.11.2018 as Driver. During that period, applications were invited by the Police Department for appointment as Drivers. The appellant properly applied for the post and mentioned about his previous service in the ETEA application. He was appointed as Driver (BPS- 7) in the Police Department vide order dated 08.11.2018. His past service rendered in Special Police Force was not considered by the respondent department. Feeling aggrieved, he filed departmental appeal which was regretted vide order dated 05.03.2021; hence the instant service appeal.

03. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant and learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

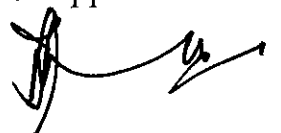
04. Learned counsel for the appellant, after presenting the case in detail, argued that denial of counting of past service of appellant from 16.05.2014 to 07.11.2018 and its regularization was illegal, void and based on discrimination. He argued that services of some other employees working with the appellant in Special Police Force, Mansehra, on their appointment in regular police, were regularized, while the appellant was discriminated. He further argued that through notification dated 08.04.2020, issued by the Home & T.As Department, services of Special Police Officers were regularized w.e.f 01.03.2020. He requested that the appeal might be accepted as prayed for.

05 Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed as Special Police Officer in the Police Department on contract basis and he was not a permanent employee of the department. The Police Department



invited applications for appointment as Constable through ETEA and he was appointed as Constable Driver vide order dated 08.11.2018. His previous service rendered in Special Police Force could not be considered as regular and the appellant had no right to move application for regularization of that service. He requested that the appeal might be dismissed.


06. Arguments and record presented before us transpired that the appellant was appointed as Constable in Special Police Force on contract basis on fixed pay at the rate of Rs. 15000/- per month w.e.f. 16.05.2014. His appointment was purely on temporary basis for a specific period. He served in that capacity till 08.11.2018, after which he was appointed as Driver Constable on the recommendations of ETEA, vide order dated 08.11.2018, in the Police Department. During the course of arguments, learned counsel for the appellant referred to regularization of certain personnel of Special Police in the year 2020 with the arguments that services of the appellant should also be regularized from the date of initial appointment in Special Police under the same notification. Here a fact that was to be kept into view that the appellant got inducted into regular police force in 2018 and, hence, he could not ask for any benefit that was extended at some later stage in 2020 to other personnel who were appointed on contract basis. The appellant could not claim any benefit of the previous service rendered by him on contract basis, as it was on fixed pay instead of graded pay. It might be noted here that in the Khyber Pakhtunkhwa Civil Servants Act, 1973, a civil servant has been defined as a person who was a member of civil service of the province, or who held a civil post in connection with the affairs of the province but a person who was appointed




on contract basis or on work charge or paid out of contingencies had been excluded from that definition. In case of the appellant, he was on fixed pay and not regularly appointed, and was hence paid out of contingencies. He could be considered a regularly appointed employee from the date when he was appointed on regular basis with graded pay, as per policy of the provincial government, and all his benefits would accrue to him from that date.

7. In view of the above discussion, the appeal in hand is dismissed, being groundless. Cost shall follow the event. Consign.

8. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 26th day of September, 2024.*


(FAREEHA PAUL)
Member(E)
Camp Court Abbottabad


(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottabad


Fazle Subhan, P.S

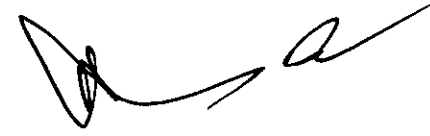
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26.09 2024 01. Mr. Hamayun, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is dismissed being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 26th day of September, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court, A/Abad


(KALIM ARSHAD KHAN)
Chairman
Camp Court, A/Abad

Fazle Subhan PS