

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.9599/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Muhammad Aftab, Deputy Director-IT, CTD HQrs, Peshawar.
.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar. **... (Respondents)**

Noor Muhammad Khattak
 Advocate **... For appellant**

Naseer Uddin Shah
 Assistant Advocate General **... For respondents**

 Date of Institution.....20.08.2020
 Date of Hearing.....13.09.2024
 Date of Decision.....13.09.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant appeal instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the respondents may kindly be directed to count the project service of the appellant towards regular service i.e. w.e.f 22.07.2006 till 09.01.2011 for the



purpose of pay protection and against not taking action on the departmental appeal of the appellant within the statutory period of ninety dates.”

2. Brief facts of the case as alleged by the appellant are that he was initially appointed as MIS Manager on fixed pay equivalent to BPS-17 in the "Computerization of Driving License and Ticketing System" project under the Department of Science and Technology & Information Technology of Khyber Pakhtunkhwa, began his duties on 20.07.2006, with his position extended through an order dated 15.02.2008. Subsequently, the Police Department advertised a post for Database Administrator (BS-17) through the Khyber Pakhtunkhwa Public Service Commission. The appellant applied through proper channel, and after successfully competing in the recruitment process, was recommended for the post of Database Administrator, receiving an appointment notification on 10.12.2010. He requested to be relieved from his previous post, which was granted on 15.10.2010, allowing him to resume his new post on 10.01.2011. Given his over six years of service in the previous project, the appellant alleged his entitlement to have his prior service counted for pay and pension. The appellant submitted departmental appeal but the respondent succumbed on the departmental appeal of the appellant. Then he filed writ petition No. 2491-P/2020 which was disposed with direction to the respondents to decide the departmental appeal of the appellant within one month vide judgment dated 06.05.2020, hence the present service appeal.
3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.



4. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.
5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned orders.
6. Perusal of record reveals appellant was initially appointed as MIS Manager BPS-17 on fixed pay in the "Computerization of Driving License and Ticketing System" project under the Department of Science and Technology & Information Technology. He began his duties on 20.06.2006, with his position extended through an order dated 15.02.2008. Subsequently, the Police Department advertised a post for Database Administrator (BS-17) through Khyber Pakhtunkhwa Public Service Commission and he applied directly/without proper channel to the post of Database Administrator and was appointed vide order dated 10.12.2010.
7. Appellant through instant appeal seeks counting of his project service towards his regular service. The appellant's claim to have his project service counted towards regular service for pay protection is not supported by the relevant legal framework. The principles established in Nafees Ahmad vs. Government of Pakistan (2000 SCMR 1864) indicate that service rendered in a project-based capacity does not automatically confer rights to benefits in a subsequent position unless explicitly stated in the terms of appointment or governed by relevant service rules. The Supreme Court in Anwar Farooq Sadozai vs. Chairman National Education and Training Commission (2002



SCMR 1282) emphasized that effective service rendered in an autonomous body is treated as effective service rendered in a post of government service only if the appointment is made as per law and the salary is fixed by the government. The appellant's previous service was under a fixed-term project, and upon his appointment as Database Administrator, he entered into a new employment contract, which does not provide for the counting of prior service for pay protection.

8. It is settled by Supreme Court of Pakistan that regularization will always has to be with immediate effect and that regularization means fresh appointment to the post in question, reliance is placed on Vice Chancellor Agriculture University Peshawar and others versus Muhammad Shafiq and others (2024 SCMR 527), Deputy Director Food Faisal Abad Division, Faisalabad and others Vs. Muhammad Tauqir Shah and others (2021 SCMR 760) and Province of Punjab through Secretary Livestock and Dairy Development Department, Government of Punjab, Lahore and others Vs. Dr. Javed Iqbal and others (2021 SCMR 767).

9. There are four conditions for pay protection which are given as under:
For the purpose of regularization of the employees under this Act, the following general conditions shall be observed:

- i) The service promotion quota of all service cadres shall not be affected;
- ii) The employees shall possess the same qualification and experience as required for a regular post;



- iii) The employees have not resigned from their services or terminated from service on account of misconduct, inefficiency or any other grounds before the commencement of this Act; and
- iv) The services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette.

As the appellant does not qualify the above mention conditions, therefore, the appellant is entitled for pay protection, therefore, appeal in hand is dismissed having no force in it. Costs shall follow the event. Cosign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of September, 2024.*



(KALIM ARSHID KHAN)
Chairman



(RASHIDA BANO)
Member (J)

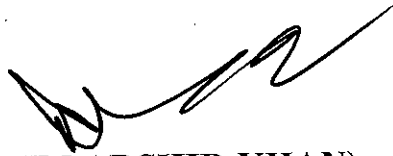
ORDER

13.09.2024

1. Learned counsel for the appellant present. Mr. Naseer Uddin Shah, Assistant Advocate General along with Syed Amir Abbas, DSP for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed having no force in it. Costs shall follow the event. Cosign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of September, 2024.*



(KALIM ARSHID KHAN)
Chairman



(RASHIDA BANO)
Member (J)