

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 1087/2023

Date of Institution ...16.05.2023

Faheem Ullah S/O Akhtar Muhammad (Assistant BPS-16), R/O Tribal  
District Mohmand.

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil  
Secretariat, Peshawar and 2 others.

ORDER

24.01.2024

Mr. Habib Ullah Mohmand, Advocate for the appellant present.

Mr. Asad Ali Khan, Assistant Advocate General on pre-admission notice  
present.

2. Precise facts giving rise to the instant appeal are that the appellant was appointed as Assistant (BPS-16) in FATA Development Authority. However, after merger of FATA into the province of Khyber Pakhtunkhwa, he alongwith other employees of FATA Development Authority were placed in surplus pool of Establishment Department for their further adjustment/placement as per policy in vogue with effect from 20.04.2020. The appellant made several requests for his adjustment/absorption either in the Establishment Department or in the Board of Revenue, however vide the impugned order dated 09.10.2020 issued by the Establishment and Administration Department, Government of Khyber Pakhtunkhwa, he was adjusted in the Directorate of Industries & Commerce, Khyber Pakhtunkhwa against the vacant post of Assistant (BPS-16). The departmental appeal of the appellant remained un-responded, hence the instant appeal.

3. Pre-admission notice was issued to the respondents, who contested

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the appeal by way of submitting para-wise comments, wherein they raised numerous legal as well as factual objections.

4. Arguments heard and record perused.

5. The appellant has invoked the jurisdiction of this Tribunal with the prayer copied as below:-

*“On acceptance of instant appeal, the impugned order dated 09.10.2020 may kindly be declared as illegal, void ab-initio, unlawful, against law to be set aside and respondents department may graciously be directed to adjust/absorb/post the appellant at respondents department i.e Establishment Department of Board of Revenue (BOR) being eligible/entitled as Assistant BPS-16 under the law with all back benefits for the sake of justice.*

*And the appellant also submitted departmental appeal/representation on 20.01.2023 for adjustment/absorption in respondents department but after passing the stipulated time period, no action has been taken by the respondents department, hence this Appeal.”*


6. Besides raising other objections in their para-wise comments, the respondents have also agitated that the appellant has concealed material facts as he had previously filed Writ Petition in Peshawar High Court, Peshawar, which was dismissed, therefore, the appeal in hand is hit by principle of Res-judicata. In this respect, respondents have annexed copy of the judgment dated 22.12.2021 passed by Peshawar High Court, Peshawar in Writ Petition No. 5170-P/2020, which was filed by the appellant and others. A perusal of the said judgment would show that the appellant had made following prayer:-

*“It is, therefore, mostly humbly prayed that on acceptance of this writ petition, all the impugned*

orders/actions dated 09.10.2020 may kindly be declared as illegal, unlawful, against the law and void ab-initio and be set-aside and respondents may graciously/kindly be directed to adjust/absorb/post at respondents Department i.e. Establishment Department or Board of Revenue, being eligible/entitled under the law with all back benefits for the sake of justice.

Any other action/remedy deems fit may kindly be granted to the petitioners.”

7. The Writ Petition was dismissed by Peshawar High Court, Peshawar, para-6 of which is reproduced as below:-

 “We have gone through the Surplus Policy of the Provincial Government and find that no deviation there from is made. Petitioners were adjusted in accordance with the said Policy, besides, in terms of para-5 of the said policy, there is an option available to the surplus employee that before transferring such employee to the surplus pool, he has to be given an option by the concerned Department to proceed on retirement with normal retiring benefits under the existing rules or to opt for readjustment/absorption against a future vacancy of his status which may not necessarily be in his original cadre/Department. Thus, where petitioners have opted to be adjusted against the corresponding posts, they have got no right whatsoever to question the same. It is not the choice of the civil servant to be posted in the Department of his choice rather this discretion is available with the Establishment Department to post him where his services are required.” (Emphasis supplied).

8. The Writ Petition filed by the appellant as well as certain other employees was dismissed on merits. Moreover, the prayer made by the appellant as well as other employees in Writ Petition No. 5170-P/2020 as well as the prayer sought by him in the instant

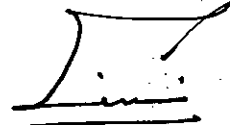
appeal is same, therefore, in view of the bar contained in Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974, the appeal in hand is not entertainable. Rule-23 of Khyber Pakhtunkhwa Service Tribunal 1974, is reproduced as below:-

*"No entertainment of appeal in certain cases: No Tribunal shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a court or a Tribunal of competent jurisdiction."*

9. Consequently, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

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24.01.2024



(Salah-Ud-Din)  
Member (Judicial)