

AZAD GOVT. OF THE STATE OF JAMMU AND KASHMIR,
LAW AND PARLIMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.

Dated the December 30, 1975.

No, 4020/ SL/ 75 The following Act of the Legislative Assembly received the assent of the President on the 16th day of December, 1975, and is hereby published for general information:-

(ACT XXII OF 1975)

AN ACT to provide for the establishment of Service Tribunals to exercise jurisdiction regarding matters relating to the term and conditions of service in respect of persons in the service of Azad Jammu and Kashmir employed in connection with the affairs of the Government.)

WHEREAS it is expedient to provide for the establishment of Service Tribunals to exercise exclusive jurisdiction regarding the matters relating to the terms and conditions of service in respect of the persons in the service of Azad Jammu and Kashmir employed in connection with the affairs of the Government and for matters connected therewith or ancillary thereto in the manner hereinafter appearing.

It is hereby enacted as follows:-

1. Short title, commencement and application: (1) This Act may be called the Azad Jammu and Kashmir Service Tribunals Act, 1975.

(2) It shall come into force at once.

(3) It applies to all civil servants wherever they may be.

2. Definitions: In this Act, unless there is anything repugnant in the subject or context,-

(a) "Chairman" means the Chairman of the Tribunal;

(b) "Civil servant" means a person who is or who has been a member of a civil service of the Azad Jammu and Kashmir in connection with the affairs of the Government or who holds or has a held a civil post in connection with the affairs of the Government but does not include—

(i) A person who is or who has been on deputation to the Azad Jammu and Kashmir from the

(ii)

(iii)

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Federation or any other province of Pakistan or authority;

A person who is or has been employed on contract or on work-charged basis, or who is or has been paid form contingencies; or

A person who is or has been a "worker" or "workman" as defined in the Factories Act, 1934 (XXV of 1934) or the workman's Compensation Act, 1923 (VHI of 1923) as in force in Azad Jammu and Kashmir;

(c) "Government" means the Azad Government of the Sate of Jammu and Kashmir;

(d) "President" means the President of Azad Jammu and Kashmir;

(e) "Member" means the Member of the Tribunal;

(f) "Registrar" means the Registrar of a Tribunal and

includes any other person authorised by a Tribunal to perform the functions and duties of the Registrar; and

(g) "Tribunal" means service Tribunal established by this Act, or a Bench thereof.

Tribunals:- (1) There shall be one or more Tribunals, each consisting of a Chairman and one or two Members possessing the qualification hereinafter provided to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of service of Civil servants including disciplinary matters.

2)

(b)

Chairman of Tribunal shall be a person who is or is qualified to be a Judge of the High Court, and

Member of a Tribunal shall be a person who has, for a period of not less than fifteen years, service under the Azad Jammu and = Kashmir Government and is not below the status of

Deputy Secretary to the Azad Jammu and
Kashmir Government.

(3) The Chairman and Members of a Tribunal shall be

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appointed by Government on such terms and conditions as are provided in the first Schedule.

Provided that if a person, who is a judge of the High Court is appointed Chairman of a Tribunal, he shall continue to be governed by the same terms and conditions as are applicable to him as Judge of the High Court.

(4) The Chairman or a Member of a Tribunal may resign his office by writing under his hand addressed to the President.

(5) The Chairman or a Member of a Tribunal shall not hold any other office of profit in the Service of Azad Jammu and Kashmir:

Provided that where a person who is a Judge of the High Court is appointed Chairman, he may, if the president in consultation with the Chief Justice of the High Court so decides, hold the office of the Chairman in addition to the performance of his functions as Judge of the High Court.

(6) (a) The terms of office of Chairman who is a Judge of the High Court may be determined by the President in consultation with the Chief Justice of the High Court.

(b) The term of office of the Chairman, other than a person who is a Judge of the High Court, and a Member of a Tribunal, unless he Resign earlier shall be four year;

Provided that the case of a person who before his appointment as Chairman or Member was in the Service of Azad Jammu and Kashmir, the terms of office shall not extend beyond his date of superannuation and in any other case beyond the age of sixty two years;

Provided further that the Chairman, other than a person who is a Judge of the High Court, or a Member of a Tribunal may be removed form office earlier than the expiry of the term of his office by an order of the president if on a reference by the president a Committee consisting of three persons who may be appointed by the President reports that-

(i) The Chairman, or as the case may be, the Member is incapable of performing the duties of office by reason of physical or mental incapacity;or

(ii) has been guilty of misconduct.

Explanation: One of the persons appointed to the committee shall be person who has been, a Judge of the High Court and the other two persons shall not be lower in status than a Deputy Secretary to the Azad Jammu and Kashmir Government.

(7) Where there are established more than one tribunal the president shall specify by notification in the official gazette the class or classes of civil servants in respect of whom, or the territorial limits within which, each Tribunal shall exercise jurisdiction under this Act.

Appeals to Tribunals: Any Civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service including disciplinary matter may, within, thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal whichever is later, prefer an appeal to the Tribunal.

Provided that:

(a) Where an appeal, review or representation to a departmental authority is provided under any law, regulations or rules of the time being enforced, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and period of ninety days has elapsed from the date on which such appeal, application or representation was to be preferred;

(b) No appeal shall lie to a Tribunal against an order or decision of a departmental authority determined--

(i) The fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade; or

(ii) The quantum of departmental punishment or penalty imposed on civil servant as a result of a departmental

inquiry except where the penalty imposed is dismissal, removal, reduction in rank or compulsory retirement from service; and

(c) No appeal shall lie to a Tribunal against an order or decision of a departmental authority made at any time before the first July 1969.

Explanation: In this section "departmental" authority means any authority other than a Tribunal, which is competent to make an order in respect of any of the terms and conditions of civil servants.

Power to Tribunals: (1) A Tribunal may, on appeal, confirm set aside, vary or modify the order appealed against.

(2) A Tribunal shall, for the purpose of deciding any appeal be deemed to be a civil court and shall have the same powers as are vested in such Court under the Code of Civil Procedure 1908 (Act V of 1908) including the powers of—

(a) Enforcing the attendance of any person and examining him on oath;

(b) Compelling the production of documents; and

(c) Issuing commission for the examination of witnesses and documents.

(3) No Court fee shall be payable for preferring an appeal to, or filing exhibiting or recording any document in, or obtaining any document from a Tribunal.

Benches and procedure: (1) The Chairman of a Tribunal may constitute a single or a division Bench of the Tribunal for hearing appeals under this Act.

(2) The conclusions arrived at after hearing an appeal under sub-section (1) by a Single Bench, or as the case may be, by a Division Bench along with the records of the appeal and written arguments, if any, shall be considered by the Tribunal as a whole and the decision shall be expressed in the terms of the views of the majority.

(3) The Chairman may at any stage transfer cases from one

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Bench to another Bench or to the whole Tribunal.

(4) The Tribunal and its Benches shall conduct business in accordance with the provision contained in the Second Schedule, If a Tribunal consists of a Chairman and one member and there is difference of opinion between them, the opinion of the Chairman shall prevail.

Casual vacancy: If the Chairman or a member of a Tribunal is, for any reason, absent or unable to take part in the proceedings of the Tribunal, the Government shall appoint a duly qualified person to act as Chairman or, as the case may be member of the Tribunal to hear and finally dispose of the appeal, application or other matter, requiring decision of the Tribunal.

Abatement of suits and other proceedings: All suits, appeals and application regarding any matter within the jurisdiction of a Tribunal pending in any Court immediately before the establishment of the appropriate Tribunal shall abate on the establishment of such Tribunal:

Provided that any party to such suit, appeal or application may, within ninety days of establishment of the appropriate Tribunal prefer an appeal to it in respect of any such matter which is in issue in such suit, appeal or application.

Applicability of the provisions of the Limitation Act, 1908:-
The provisions of section 5 and 12 of the Limitation Act, 1908 (IX of 1908) shall apply to appeals under this Act.

Power to make rules:- The Government may, by notification in the official gazette made rules for carrying out the purposes of this Act.

Repeal: The Azad Jammu and Kashmir Administrative Tribunal Ordinance, 1975 (Ordinance XXVI of 1975) is hereby repealed.

FIRST SCHEDULE

(See Section 3 (3))

PART 1-Terms of office

Maximum age for appointment as member:- No person, who is more than 55 years of age, shall be appointed as a member.

Oath of office: Before entering upon his office, a Chairman other than a person who is Judge of the High Court, and a Member shall, before the Chief Justice of the Azad Kashmir High Court or a Judge nominated by the Chief Justice for the purpose, make an oath in the form appended to this Schedule.

Seniority: The seniority interse of the Members shall be determined in accordance with the respective dates of their entering upon their office as Member:

Provided that when a Member is appointed for a second or subsequent term, his seniority shall be reckoned form the date when he enters upon the second or subsequent term of office, as the case may be.

Pay:- (1) A Chairman shall:-

(a) If, before his appointment as Chairman, he has retired form the service of Azad Kashmir, draw the pay last drawn before retirement, and the amount of his full pension, including special additional pension (if it has not been held in abeyance), will be deducted form his pay thus fixed; and

(b) If any other case, draw pay as is admissible to a Government servant in the National pay Scale No, 20 or if he was, before his appointment as Chairman, in the service of Azad Kashmir, the pay which he would have received but for such appointment, whichever is higher.

(2) A Member shall—

(a) In on the date of his appointment as Member of a Tribunal he was in the service of Azad Kashmir, receive the grade of pay that he was drawing immediately before his appointment as Member:

Provided that a Member in addition to the grade of pay, would get a special pay of Rs. 440/- per month subject to a maximum of Rs. 2300/- per month if his pay

is in National Pay Scale below grade 20.

(b) If, before his appointment as member, he has retired from the service of Azad Kashmir, draw pay last drawn before retirement and the amount of his full pension, including special additional pension (if it has not been held in abeyance), will be deducted from his pay thus fixed.

Explanation: For the purpose of this Para, pay includes special pay which a Chairman or a Member was drawing before his appointment as such Chairman or Member.

Pension: (1) No pension shall attach to the office of a Chairman or a Member as such, but if a Chairman or a Member was on the date of his appointment in the service of Azad Kashmir, services as Chairman or Member shall count for pension under the rules applicable to the service or grade to which such Chairman or Member belongs; and unless a member be a Member of an All Pakistan Service or a Member be entitled to pension under Army Regulations, service as Member shall also count as service in the higher grade or upper grade for the special additional pension under the rules applicable to him on the date of his appointment to the Tribunal.

(2) In the case of a retired Government servant, service as a Member shall not count as qualifying service for the purpose of recalculating his pension at the expiry of his term of office as a Chairman or a Member.

Provident Fund:- (1) It shall be permissible for a Chairman or a Member, if he so elects, to subscribe to the General Provident Fund in accordance with the rules relating to that Fund.

(2) A Chairman or a Member who, on the date of his appointment was in the service of Azad Kashmir and had been admitted to the benefits of any Provident Fund maintained by Government shall be eligible, after appointment to the Tribunal, to continue to subscribe to the said Fund upon the same terms and condition and subject to the rules of that Fund:

Provided that he shall cease to subscribe to the Fund on attaining the age of superannuation in his previous service and the amount standing to his credit in the said fund after such deductions as are authorized under the rules applicable to him shall become payable to him.

PART II- LEAVE

Leave: A Chairman or a Member who on the date of his appointment was in the service of Azad Kashmir may be granted leave by the President under the rules applicable to him immediately before his appointment, and his service as a Chairman or a Member shall count for such leave.

A Chairman or a Member who on the date of his appointment was not in the service of Azad Kashmir may be granted leave by the President as follows:-

(i) (a) Leave on leave salary equivalent to full pay up to one-eleventh of the period spent on duty as a Chairman or a Member, subject to a maximum of four months at any one time; or

(b) If a Chairman or a Member so elects, leave on leave salary equivalent to full pay (to be taken not more than once during his term of office) for a period not exceeding four months;

(ii) Leave on medical certificate on leave salary, equivalent to half pay up to two-elevenths of the period spent on duty as a Chairman or a Member, subject to a maximum of three months at any one time; and

(iii) | Extraordinary leave without salary.

Explanation: A person who retires from the service of Azad Kashmir and is re-employed as Chairman or Member shall be governed by the provisions of this Para.

PART III

TRAVELING ALLOWANCE AND MEDICAL ATTENDANCE

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Traveling Allowance: For the purpose of Traveling Allowance—

(a) A Chairman shall be entitled to the allowance admissible to a Judge of a High Court; and

(b) A Member shall be entitled to allowance admissible to a secretary to Government.

Medicinal allowance: A Chairman and a Member shall be entitled to the medical facilities admissible in terms of the

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Government Servant (Medicinal Attendance) Rules:

Provided that Chairman or a Member who, on the date of his appointment to the Tribunal, was in the service of Azad Kashmir may elect to be governed by the rules applicable to him immediately before the said date.

Where a person appointed as a Chairman or a Member was, immediately before his appointment as such, in the service of Azad Kashmir, his rights as a person in the service of Azad Kashmir shall not be affected by his appointments as Chairman or Member.

FORM OF OATH

(Vide paragraph 2)

I, --- do solemnly swear that as Chairman/
Member of the Service Tribunal established under the Azad Kashmir Service Tribunal Act, 1975, I will discharge my duties and perform my functions honestly to the best of my ability, faithfully in accordance with the Constitution of the Azad Kashmir and the law, and without fear or favour, affection or ill will and that I will not allow my personal interest to influence my official conduct or my official decisions.

(SECOND SCHEDULE)

(See section 6 (4))

Every memorandum of appeal shall--

(a) Be legibly, correctly and concisely hand-written, type written or printed;

(b) be divided into paragraphs numbered consecutively each paragraph containing as nearly as may be, a separate allegation;

(c) contain full name, official designation and place of

posting of each party;

(d) Clearly set out the relief claimed;

(e) be accompanied by—

(i) a copies of the order of the competent authority against which the appeal is preferred; and

(ii) copies of rules, orders and other documents on which the appellant proposed rely in support of his claim;

(f) be signed by the appellant; and

(g) be accompanied by three spare copies of the memorandum of appeal and as many other copies, thereof duly initialed by the appellant and accompanied by the documents referred to in sub-paragraph (e), as there are respondents.

An appeal may be sent to the Registrar by a registered post acknowledgment due or it may be presented to the Registrar during the working hours either by the appellant personally or through his Advocate.

In every memorandum of appeal, the competent authority shall be shown as the first respondent and thereafter all other parties to the dispute shall be shown as respondents.

qd) The Register shall scrutinize every Memorandum of appeal received by post or presented to him and shall—

(i) if it be in order and drawn up in accordance with the provisions of paragraph 1, cause it to be registered in the register of appeals to be maintained in Form "A" appended to this Schedule, and, with the approval of the Chairman, shall fix a date for its preliminary hearing before a Bench of the Tribunal as the case may be; or

(ii) if it is not drawn up in accordance with the provision of paragraph 1, return it to the appellant for amendment, within a time to be specified in an order to be recorded by him on the memorandum of appeal, pointing out the deficiency.

(2) If the memorandum of appeal is not re-submitted within the period specified under clause (ii) of sub-paragraph (1) of paragraph 4, the appeal shall stand dismissed.

qd) The Bench or the Tribunal as the case may be, after hearing the appellant or his Advocate on the date fixed for preliminary hearing or in such subsequent dates to which such hearing may be adjourned, may dismiss the appeal in limine.

(2) If the appeal is not dismissed in limine, notices of admission of appeal ----- and of the day fixed or its regular hearing shall be served on the appellant, the respondents and such other persons as the Tribunal may deem proper.

qd) A notice under sub-paragraph (2) of paragraph 5, shall be in such form as may be approved by the Tribunal as may be served by registered post or in any other manner, including publication in one or more daily newspapers as the Bench admitting the appeal or the Tribunal may direct; provided that where the notice is directed to be served by publication in the newspapers, it shall not be issued until the costs of its publication are deposited by the appellant.

(2) The notice to the respondent shall be accompanied by a copy of memorandum of appeal and copies of other documents referred to in sub-paragraph (e) of paragraph 1.

(3) Service of notice in accordance with the provisions of this Paragraph shall be deemed to be due notice, and it shall not be necessary to prove that a party has actually received the notice.

qd) In response to the notice served under paragraph 6, the respondent may send his objections to the appeal by registered post acknowledgment due to the Registrar or deliver the same to him either personally or through this Advocate on or before the date fixed for hearing of the appeal.

(2) The objection shall be legible and concisely hand-written type-written or printed, shall be signed by the respondent and shall be accompanied by a copy of the order or other document on which the respondent wishes to reply in support of his objection.

(3) The written objections shall be accompanied by four spare copies thereof, complete in all respects, and containing copies of the order and documents referred to in sub-paragraph (2) three of those copies shall be supplied for the use of the Tribunal and the fourth copy for the appellant or his Advocate.

(4) In case objections are not received or delivered within the time allowed under sub-paragraph (1), the respondent may be proceeded against ex-parte.

qd) Questions arising for determination by a Tribunal shall be decided ordinarily upon affidavits and documents proved by

affidavits but the Tribunal may direct that such questions, as it may consider necessary, be decided on such other evidence and in such manner as it may deem fit.

(2) The party affected by an affidavit may be permitted by the Tribunal to cross-examine the deponent with reference to the statements in the affidavit.

qd) An Application for summoning witness before the Tribunal shall be made, as soon as possible, after the issue of notice of appeal under paragraph 5, It shall state----

(a) The name, designation and address of the witnesses to be summoned;

(b) A brief resume of the evidence which each witness is

expected to give; and

(c) A brief description of the document to be summoned and name and location of the office in which such document is expected to be.

(2) If the Tribunal is of the opinion that the evidence of any witness specified in the list of witness given under subparagraph (1) may be of material assistance in the disposal of an appeal before, it shall direct him to be summoned, on a date to be fixed by the Tribunal and direct that the daily allowance and traveling charges of such witness at the rate should be deposited by the person calling him, within seven days of the date of the order.

(3) If a person applying for the summoning of a witness fails to deposit the requisite costs of the witness within the period specified in sub-paragraph (2) or within any extension thereof that may be granted by the Tribunal, the application for summoning of witness, so far as it relates to such witness, shall be deemed to have been rejected.

(4) If the Tribunal is of the opinion that the evidence of any witness is necessary for the disposal of an appeal before it, it may direct him to be summoned.

(5) Where a Tribunal summons a witness under the provisions of sub-paragraph (4)

(a) if such witness is a Government servant, his traveling and daily allowance, (if any) shall be borne by Government; and

(b) if the witness is a private person his traveling allowance and daily allowance shall be borne by such parties and to

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such extend as may be determined by the Tribunal.

qd) Process for service on witnesses of high rank shall be sent in the form of a letter and acknowledgment received.

(2) Except in urgent cases or as otherwise ordered by the Tribunal, a summon requiring a public officer to give evidence or to produce a document shall be served through the head of his office.

qd) A daily cause list shall be prepared under the order of the Registrars, which shall be affixed on the notice board of the court-room of the Tribunal.

(2) Except as otherwise directed by the Tribunal cases, will be set down in the cause list in the order of the date of admission.

qd) Evidence of a witness examined by the Tribunal shall be taken down under the superintendence of the Tribunal ordinarily in the form of a narrative and shall be signed by the members of the Tribunal and shall form part of the records.

(2) The parties or their Advocates may suggest any question to the Tribunal and the Tribunal may put such, besides any other question to the witness.

(3) The Tribunal may record such remarks as it thinks material respecting the demeanor of any witness while under examination.

(4) The Tribunal may close the evidence of any party if there is inordinate delay or expense involved in its production, provided that the interest of justice so permits.

qd) If on the date fixed for hearing of appeal or on any subsequent date to which the hearing may be adjourned, the appellant or his Advocate is not present before the Tribunal, the Tribunal may dismiss the appeal or, if it thinks fit, may proceed to hear the other party and decide the same.

(2) If on the date fixed for hearing of appeal or on subsequent date to which hearing may be adjourned the respondent or any one or more of the respondents, in case there are more than one respondents, or his or their Advocates, are not

present before the Tribunal, the Tribunal may hear the appeal ex-parte against all or any of the respondents.

(3) Where an appeal has been dismissed under subparagraph. (1) or the ex-parte proceedings have been taken under

sub-paragraph (2), the Tribunal may on such order as to costs, as it may deem fit restore the appeal or set aside the ex-parte order as the case may be, or allow the defaulting party to rejoin the proceedings.

14. A copy of every order of final adjudication on an appeal shall be furnished by the tribunal free of cost to competent authority concerned.

15. Clerical or arithmetical Mistake in an order of final adjudication, arising therein from any accidental slip or omission may at any time to be corrected by the Tribunal either of its own motion or on the application of any of the parties:

Provided that where a party makes an application, it shall be duly supported by an affidavit.

16. The provisions Contained in the High Court Rules and or in regard to copies and inspection of record shall mutatis-mutandis and to the extent practicable apply to the proceedings before a Tribunal.

17. If a civil servant is unrepresented before a Tribunal and cannot afford to engage a counsel, the Tribunal may make arrangements to employ a council at Government expense.

FORM "A"

REGISTER OF APPEALS

(See Paragraph 5 (1) (i))

1. _| Serial No.
2. _| Date of presentation of appeal.
3. _| Name and address of the appellant.
4. | Name and address of the respondent.
5. _| Date of Registration of appeal.
6. _| Whether admitted or dismissed in I mine with date of order.
7. | Amount of security and costs deposited by the appellant.
8. | Date of final order.
9. _| Brief substance of the final order.
10. | Date on which copy of the final order sent to the competent

authority.

Sd/ (Mohammad Akram Shah)
Deputy Secretary

Law and Parliamentary Affairs
Azad Government of the State of
Jammu and Kashmir

