
NHA's Employees Venue for Appeal



RCBHC



RESEARCH CENTER, HIGH COURT OF BALUCHISTAN

COURT: HON'BLE MR. JUSTICE GUL HASSAN TAREEN BHC
SUBJECT: CONSTITUTIONAL LAW/SERVICE LAWS
DATE: 21ST NOVEMBER 2024
BY: Waseem Ahmed Raees/Izhar Ahmed Langove Research Officers
 Syed Muhammad Usman

QUERIES:

Whether employees of the National Highway Authority (NHA) possess the right to file appeals before the Service Tribunals under the provisions of Section 13(3) of the NHA Act, 1991?

In response to the query, it is submitted as under:-

Overview of the Legal Framework

The concept of civil service in Pakistan is fundamentally rooted in the Constitution. The term "***Service of Pakistan***" is defined in Article 260 of the Constitution, encompassing any service, post, or office related to the affairs of the Federation or a Province, which includes the All-Pakistan Services¹, services in the Armed Forces, and any other service designated as such by law. Article 240 empowers the Federal Legislature or as the case may be, the Provincial Assembly, to make laws regarding the recruitment and conditions of persons in the service of Pakistan, ensuring that appointments are made based on merit and in accordance with established rules. Article 242 further provides for the establishment of a Public Service Commission aimed at promoting meritocracy and ensuring the integrity of the civil service. Article 242(1) empowers the Parliament and Provincial Assemblies to create Public Service Commissions, which are tasked with conducting competitive examinations and assessments for the recruitment of civil servants, thereby fostering a merit-based selection process.

In line with the constitutional mandate and to regulate the terms and conditions of persons in the service of Pakistan, the Civil Servants Act, 1973 ("***the CSA***") was enacted to provide a comprehensive framework for the appointment,

terms, and conditions of service of a category of persons in the service of Pakistan designated as “**civil servants**” in Pakistan. The preamble of the Act states: *Whereas it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons, in the service of Pakistan, and to provide for matters connected therewith or ancillary thereto*". This establishes the Act's purpose of ensuring that civil servants have a defined legal status and provide for the terms and conditions and matters related to their employment. The CSA defines a "Civil Servant" in Section 2(1) (b) as follows:

"Civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the Federation or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include

- (i) a person who is on deputation to the Federation from any Province or other authority;
- (ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies; or
- (iii) a person who is "worker" or "workman" as defined in the Factories Act, 1934 (XXV of 1934), or the Workman's Compensation Act, 1923 (VIII of 1923):

This definition establishes the criteria for determining who qualifies as a civil servant within the context of the Act and the associated legal framework.

The Service Tribunals Act, 1973 (**"the STA"**) was enacted to establish a *specialized forum* for the resolution of disputes related to the terms and conditions of service of civil servants in Pakistan. The preamble of the Act states: *"Whereas it is expedient to provide for the establishment of Administrative Tribunals, to be called Service Tribunals, to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants, and for matters connected therewith or ancillary thereto"*. This highlights the Act's purpose of ensuring that civil servants have access to a dedicated legal mechanism for addressing grievances and disputes arising from their employment, thereby reinforcing their rights and protections under the law.

The STA defines a "Civil Servant" in Section 2(1) (b) which is jotted down as under:-

- * [(a) "civil servant" means a person who is, or has been, a civil servant within the meaning of the Civil Servants Act, 1973^{**} (LXXI of 1973);] ^{***} [and shall include a person declared to be a civil servant under section 2(a); and]

(b) "Tribunal" means a Service Tribunal established under section 3.

[@][2-A. Service under certain corporations, etc. to be service of Pakistan.—Service under any authority, corporation, body or organization established by or under a Federal law or which is owned or controlled by the Federal Government or in which the Federal Government has a controlling share or interest is hereby declared to be service of Pakistan and every person holding a post under such authority, corporation, body or organization shall be deemed to be a civil servant for the purposes of this Act].

It is apt to mention here that in the year 1997 section 2-A was introduced through Service Tribunal (Amendment) Act 1997, which aimed at extending the jurisdiction of Service Tribunals to include employees of statutory, corporations, bodies and organizations established by, or under a Federal Legislation or owned or controlled by the Federal Government or in which the Federal Government has a controlling share or interest, thereby allowing them to seek redress for grievances related to their terms and conditions of service. However, this provision faced significant legal scrutiny by Hon'ble Supreme Court of Pakistan. In case titled Muhammad Mobeen-us-Salam and others vs. the Federation of Pakistan cited as (PLD 2006 Supreme Court 602) a larger Bench of the Supreme Court of Pakistan comprising on nine (09) esteemed judges, while hearing a number of petitions and appeals filed against the judgments of the Federal Service Tribunal passed o appeals under section 4 read with section 2-A of the Service Tribunal Act 1973, tested the vires of the constitution on the touch stone of Constitution and declared as section 2-A partially ultra vires to the Constitution. The Court held that:

“108. The threadbare discussion on the subject persuades us to hold:---

*(1) Section 2-A of the STA, 1973 is, **partially**, ultra vires of Articles 240 and 260 of the Constitution, **to the extent of the category of employees, whose terms and conditions of service have not been determined by the Federal Legislature and by a deeming clause they cannot be treated civil servants as defined under section 2(1)(b) of the CSA, 1973 and they are not engaged in the affairs of the Federation.***

(2) Section 2-A of the STA, 1973 cannot be enforced in the absence of amendment in the definition of the civil servant under section 2(1) (b) of the CSA, 1973.

*(3) The cases of the employees under, section 2-A, STA, 1973, **who do not fall within the definition of civil servant as defined in***

section 2(1)(b) of the CSA, shall have no remedy before the Service Tribunal, functioning under Article 212 of the Constitution and they would be free to avail appropriate remedy.”

Thus the case culminated in *partial annulment* of the section 2-A by the Supreme Court in the case. As a consequence of the said judgment, hundreds of pending cases before the Tribunal were disposed of as being abated without any discrimination of cases of all categories of employees covered by section 2-A of STA. However in **Muhammad Idrees v. Agricultural Development Bank of Pakistan (PLD 2007 SC 681)**, the Supreme Court clarified the legal position and observed that cases involving employees not covered by statutory rules stood abated, nullifying Tribunal judgments in such instances while providing affected parties 90 days to seek alternative remedies. However, for employees governed by statutory rules, the judgment in *Mubeen-us-Salam* was deemed inapplicable, and such cases required further adjudication. This is what the Court observed:

“This Court accordingly finds and directs as follows:-

(a) The cases noted at serial Nos. 89 to 1914 stand abated with the result that the proceedings and judgments rendered by the learned Federal Service Tribunal also stand nullified. The affected/aggrieved parties are allowed a further period of 90 days to have recourse to the available remedies.

(b) The judgments of the learned Federal Service Tribunal rendered on the basis of Section 2-A of the Service Tribunals Act, 1973 which were never challenged before this Court have attained finality-and shall be implemented by the concerned organizations without dragging the employees into further litigation.

(c) The cases in which the services of the employees were governed by statutory rules are not hit by Mubeen-us-Salam's case.

15. As a result thereof cases mentioned below from serial Nos. 89 to 1914 stand abated while the cases at serial Nos.1 to 88 and 1915 to 2162. shall be fixed for further hearing and disposal before appropriate Bench.”

The clarification provided by the Supreme Court in **Muhammad Idrees case** resolved any ambiguity arising from the partial annulment of Section 2-A of the Service Tribunals Act, 1973, in *Muhammad Mubeen-us-Salam case*. The Court unequivocally established that the nullification of Section 2-A applied solely to employees whose terms and conditions of service were not governed by statutory rules, reaffirming that such individuals could not invoke the jurisdiction

of Service Tribunals. This distinction ensured that employees governed by statutory frameworks retained their legal rights and avenues for redress. By drawing this clear boundary, the Court effectively eliminated potential confusion, underscoring that the annulment did not disturb the jurisdiction of Service Tribunals over cases involving employees with statutorily governed services.

It may not be out of context to add here that subsequently the section 2-A of the Service Tribunal Act 1973 was repealed by the Legislature and following such abrogation the legal position once again changed. Consequently, in **Syed Tahir Abbas Shah v. OGDCL (2011 SCMR 1912)**, the Supreme Court expound the legal position that after the repeal of Section 2-A of the Service Tribunals Act, employees whose services are governed by statutory rules may seek redress for their grievances through constitutional petitions under Article 199 of the Constitution in the High Court. it was articulated that:

*“Petitioner has sought leave to appeal against the judgment dated 19-4-2011 passed by the Islamabad High Court, Islamabad, whereby his petition instituted under Article 199 of the Constitution has been dismissed for want of jurisdiction with the observation that remedy is available to the petitioner before the Federal Service Tribunal. Foundation laid for this argument is based on the judgment of this Court in the case of Muhammad Idrees v. Agricultural Development Bank of Pakistan and others (PLD 2007 SC 681) (2007 PLC (C.S.) 1332). It is to be noted that cited judgment was handed down after the judgment of this Court in case of Muhammad Mubeen-us-Salam v. Federation of Pakistan through Secretary, Ministry of Defence and others (PLD 2006 SC 602). Both these judgments relate to interpretation of section 2-A of the Service Tribunals Act, 1973 according to which the employees of a Corporation were deemed to be civil servants, however, while interpreting section 2-A of the Service Tribunals Act, 1973 it was declared that the persons who were governed by statutory rules they could approach the Service Tribunal. Subsequently, section 2-A was repealed. In the meanwhile in respect of the employees of Corporation this Court in the case of Executive Council Allama Iqbal Open University v. M. Tufail Hashmi (2010 SCMR 1484) **settled down that now the employees who are governed by the statutory rules shall have remedy before the High Court, if they are not falling within the definition of civil servants in terms of the Civil Servants Act, 1973.** It may be noted that prior to it, same view was adopted in Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676) relevant para wherefrom is reproduced hereinbelow:--*

"19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding

their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction.”

Framework and Functions of the National Highway Authority

The National Highway Authority (NHA) was established under the National Highway Authority Act, 1991, with the primary purpose of planning, developing, operating, and maintaining national highways and strategic roads across Pakistan. The Act outlines the functions of the NHA, which include the construction and management of highways, ensuring their safety and efficiency, and facilitating the movement of goods and people. The NHA is empowered to formulate policies, implement projects, and regulate the use of national highways, including the collection of tolls and rental charges for the use of its roads and right of way. Additionally, the Authority plays a crucial role in coordinating with other governmental bodies to ensure that the infrastructure meets the growing demands of transportation and commerce, thereby contributing to the overall economic development of the country. The Act 1991 provides specific provisions regarding the service of the Authority, including recruitment, terms and conditions of service, and the status of its employees. Under Section 13 of the Act, the NHA is empowered to appoint officers and servants as necessary for the performance of its functions. Sections 13 and 14 of the NHA Act relate to appointment of officers and servants of the NHA and their terms and conditions which are reproduced below for ready reference.

“13. Appointment of officers, servants etc.—(1) The Authority may from time to time employ such officers and servants, or appoint such experts or consultants, as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit.

(2) Notwithstanding anything contained in Sub-section (1), any rules made, or orders or instructions issued, by the Authority, or in the terms and conditions of service of any person employed by or serving under the Authority, the Authority may at any time terminate the services of any person, after giving him not less than sixty days notice or pay for the period by which such notice falls short of sixty days.

(3) Service under the Authority is hereby declared to be service of Pakistan and every person holding a post under the Authority, not being a person who is on deputation to the Authority from any province, shall be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1973.

14. Recruitment and condition of service.—The Authority shall, with the approval of the Council, prescribe the procedure for appointment and terms and conditions of service of its officers and servants.”

Section 31 of the NHA Act states that the Federal Government has the authority to create rules for the implementation of the Act through a notification in the official Gazette. Additionally, Section 32 grants the NHA the power to establish regulations that are consistent with these rules, addressing all matters where regulations are deemed necessary.

In exercising the powers granted by Sections 14 and 31 of the NHA Act, the Federal Government has framed the NHA Employees Service Rules 1995. The Rules provide a comprehensive framework governing the appointment, promotion, and conduct of employees within the NHA. These rules outline the procedures for regularization of services, promotion criteria based on seniority and fitness, and the rights of employees regarding disciplinary actions.

The central legal question now arises: Do employees of the National Highway Authority (NHA) possess the right to file appeals before the Service Tribunals under the provisions of Section 13(3) of the NHA Act, 1991?

It is significant to note that provisions of section 13 (3) of the Act 1991 and section 2-A of the STA (abrogated) are *pari materia* or *identico* as both, by legal fiction, create(d) jurisdiction and authority of Service Tribunal over employees other than those categorized as “Civil Servant” under the CSA, *while Section 13(3) of the NHA Act specifically pertains to the employees of the National Highway Authority except those on deputation from any province, whereas Section 2-A of the Service Tribunals Act had a blanket effect and applied broadly to each employees of corporations, authorities, and bodies, thereby creating a clear distinction between the two provisions in terms of their scope and application.* The grounds collectively formed the basis for the Supreme Court's decision regarding the *vires* of section 2-A of the Service Tribunals Act, 1973, are summarized as follows.

- (i) **Exclusion from Definition of Civil Servant:** Section 2-A of the Service Tribunals Act, 1973, impliedly included persons who are expressly excluded from the definition of "civil servant" as per section 2(1) (b) of

*the Civil Servants Act, 1973*². This inclusion was deemed *ultra vires* as it contradicted the established definitions.

- (ii) **Absence of a Post in Connection with the Affairs of the Federation:** The court held that for a person to be deemed in the service of Pakistan, they must hold a post or office in connection with the affairs of the Federation. If they do not hold such a post, they cannot claim to be in the service of Pakistan but section 2-A extended the jurisdiction of Service Tribunals to employees whose terms and conditions of service were not determined by the legislative enactment as mandates under Article 240 of the Constitution that matters related to the persons in the service of Pakistan must be determined by legislative enactment. Section 2-A circumvented this constitutional requirement by overstepping its legislative competence.
- (iii) **Distinction between "Civil Servants" and "Service of Pakistan":** Article 260 defines "*Service of Pakistan*" to include any service, post, or office in connection with the affairs of the Federation or a Province, including All Pakistan Services and Armed Forces. However, the term "*civil servant*," as defined in Section 2(1) (b) of the Civil Servants Act, 1973, is narrower in scope. Section 2-A failed to respect this distinction, unconstitutionally conflating the two terms.
- (iv) **Unlawful Extension of Tribunal's Jurisdiction:** The Service Tribunals were designed to adjudicate disputes specifically concerning civil servants as defined by the Civil Servants Act, 1973. By extending the Tribunal's jurisdiction to employees not formally recognized as civil servants, Section 2-A disrupted the legal framework envisioned under Article 212 of the Constitution, which delineates the scope of such tribunals.
- (v) **Encroachment on Legislative Competence:** Article 240 entrusts Parliament and Provincial Assemblies with exclusive powers to legislate the terms and conditions of service for civil servants. Section 2-A diluted this constitutional provision by unilaterally expanding the Service Tribunals' reach without proper legislative backing or constitutional amendments.
- (vi) **Contravention of Appointment and Service Governance:** Section 5 of the Civil Servants Act, 1973, mandates that appointments to the service

of Pakistan must be made under the authority of the President or an authorized delegate. Section 2-A effectively brought under the Tribunal's jurisdiction individuals who were not appointed or governed under these constitutional and statutory provisions, thereby exceeding its mandate.

- (vii) **Undermining Constitutional Safeguards:** Section 2-A diluted the precise and constitutionally sanctioned framework governing the service structure in Pakistan by attempting to treat non-civil servants as if they were part of the service of Pakistan, undermining the legislative intent and safeguards provided under the Constitution.
- (viii) **Deeming Clause Limitations:** The Court pointed out that while a deeming clause can create a legal fiction, it cannot extend beyond the language of the section that creates it. Therefore, merely declaring someone a civil servant through a legal fiction does not fulfill the constitutional requirements for being in the service of Pakistan except **if such person is in the Government controlled Corporations etc. and have been appointed in a prescribed manner, would be deemed to be in the service of Pakistan and if their status is declared to be a civil servant, only then they would be entitled to enjoy the benefits of section 2-A of the Service Tribunals Act, 1973,**

A close analysis suggests that Section 2-A of the STA was **partially struck down** by the Supreme Court to the extent that it universally included every employees of Corporations, Authorities, Bodies or Organization established by or under the Federal law, which also extended to employees falling outside the official definition of "civil servants" under the CSA, *including those who were not involved in federal affairs or did not meet the criteria for being appointed under the CSA framework*. While section 13 (3) on the other hand unlike Section 2-A of the STA, which broadly included all employees of government-controlled bodies, is narrowly confined to NHA employees. **Secondly**, the NHA is a statutory body established under federal law, and its employees engage in functions directly related to the affairs of the Federation, such as planning, development, and maintenance of national highways. This establishes the requisite nexus with federal affairs, satisfying the criteria emphasized by the Supreme Court. **Thirdly**, **Section 13(3) does not contravene Article 240, as it operates within the legislative framework of the NHA Act, 1991,** which was duly enacted by the Federal

Legislature. *Fourthly, NHA employees are appointed and governed under rules and regulations framed by the Federal Government in accordance with the NHA Act. This ensures compliance with Section 5 of the CSA and avoids the governance issues identified in Section 2-A.* In nutshell, **Section 13(3) of the NHA Act, 1991, withstands the scrutiny applied by the Supreme Court in Muhammad Mobeen-us-Salam.**

It very important to reiterate here that cases of *Muhammad Mobeen-un-Salam & Muhammad Idrees*, the August Supreme Court of Pakistan, *set a principle that the jurisdiction of service tribunals hinges on the statutory nature of service rules, providing clarity for future cases by making a declaration that employees whose services are governed by statutory rules are entitled to invoke the jurisdiction of the Service Tribunals under the Service Tribunals Act, 1973 if such employees are declared persons in the service of Pakistan and by fiction of law deemed civil servant under Service Tribunal Act 1973 for limited purpose of appeal.* Although in the latter case of *Syed Tahir Abbas Shah*, the Court determined that such employees should instead seek recourse in the High Court under its writ jurisdiction, such a position taken after the repeal of Section 2-A of the Service Tribunals Act, which had previously designated these employees as civil servants. **In contrast, the status of employees of the National Highway Authority (NHA) remained unaffected, as Section 13(3) of the NHA Act, 1991 continues to uphold their legal standing with the same effect as the now-repealed Section 2-A, applying to all employees governed by statutory service rules.**

Although in case of *Syed Tahir Abbass Shah* the forum for such employees were declared High Court under writ jurisdiction but such *exposition was made following the abrogation of section 2-A of the STA, as there remained no law in field declaring such service to be service of Pakistan and deeming such employees civil servant under STA. In contrast, the status of the employees of the NHA stayed unaffected in that section 13 (3) of the Act 1991 holds the field with same force as section 2-A, prior to its abrogation, held for all those employees being governed by statutory service rules.*

Even in case **Muhammad Shafique v. The National Highway Authority and others** (2022 LHC 2066) is also referred to for said purpose of demonstrating that service matters of employees of the National Highway

Authority (NHA) are adjudicated by the Service Tribunal under Section 13(3) of the National Highway Authority Act, 1991, which declares NHA service as service of Pakistan. **The Lahore High Court acknowledged that, after regularization, an NHA employee is deemed a civil servant for the purposes of the Service Tribunals Act, 1973.** While the Court held the constitutional petition maintainable in this case due to the specific issue of suitability and fitness for regularization, which does not fall within the terms and conditions of service, it did not rule or suggest that the Service Tribunal was the wrong forum for service-related disputes. This reference is confined to the jurisdictional aspect and does not rely on the case's substantive merits.

To add extra support this view, it is pertinent to highlight that the West Pakistan Water and Power Development Authority Act, 1958, was amended through the West Pakistan Water and Power Development Authority (Amendment) Act, 1975 (Ordinance No. LXXXIV of 1975), and the West Pakistan Water and Power Development Authority (Amendment) Ordinance XVI of 1975. This amendment introduced Section 17(1-B) into the Act, which is reproduced below for ease of reference:

"[1-B) Service under the Authority is hereby declared to be service of Pakistan and every person holding a post under the Authority, not being a person who is on deputation to the Authority from any Province, shall be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1973 (LXX of 1973).]"

This section is identical to section 13 (3) of the NHA. In case of Muhammad Mobeen-un-Salam, the Apex Court identified its existence and also traced the judicial gloss developed about its constitutionality and legality but did not disturb it. This reinforces the notion that employees of WAPDA are considered civil servants for the purposes of the Service Tribunals Act on the strength of section 17 (1B) of WAPDA. Below is the excerpt of the judgment in this behalf:

"39. Perusal of section 17(1-B) indicates that service under the Authority was declared to be service of Pakistan and every person holding a post under the Authority, except those who are on deputation to the Authority from the Province, were deemed to be 'civil servants' for the purpose of STA, 1973. Significance of the amendment is that holder of a post under the Authority was declared to be in the Service of Pakistan. This Court, in the case of WAPDA v. Muhammad Arshad Qureshi (1986 SCMR 18) examined the provisions of section 17(1-A), 0-13) and (1-C) of the WAPDA Act, 1958 along with sections 4 and 6 of the STA, 1973 (Act LXX of 1973) and held that jurisdiction of the Service Tribunal itself shall not be affected. Again

this view was reaffirmed in the case of *WAPDA v. Agha Nazim Ali* (1986 SCMR 574). Similar view was reiterated in the case of *WAPDA v. Javaid Ahmad* (1989 SCMR 1068). Subsequent thereto, In **the case of Project Director Ghotki, (WAPDA) v. Commissioner, Workmen's Compensation Authority for the Payment of Wages Act (PLD 1992 SC 451)**, leave to appeal was granted to examine the question of law "whether the respondents were employees of WAPDA and as such in the service of Pakistan and their grievance, if any, could be redressed by the Service Tribunal and not by the Commissioner Workmen's Compensation and Authority under Payment of Wages Act." In this case, facts were that respondents were appointed as work charge employees in the projects known as-'Salinity, Control and Reclamation Project (SCARP)'. On completion and successful running of the Project, these were handed over to the Government of Sindh along with the staff, which opted for such transfer. The Government of Sindh took them to be fresh appointees, regular in nature, and the WAPDA took the transfer as termination of their appointment with it. In this background, affected employees approached the Commissioner Workmen's Compensation and Authority under the Payment of Wages Act, claiming gratuity, pay etc. in lieu of earned leave and notice pay. The question of jurisdiction was seriously raised but was repelled and the Authority granted them relief. This order was challenged before the High Court by invoking its constitutional jurisdiction but without any success as the High Court declined to grant relief. Consequently, the matter came up for consideration before this Court and the proposition was answered as follows:--

"9. In the position of work charge establishment under the Authority the respondents would undoubtedly be treated as in the service of Pakistan but not everyone in the service of Pakistan is a civil servant for the purposes of the Service Tribunals Act. In the Service Tribunals Act itself and in the Civil Servants Act 'civil servant' has been so defined as to exclude workmen. **That apart, for the purposes of the Service Tribunals Act only such of the employees of the WAPDA could be treated as civil servants who were holding a post under the Authority.** Work charge establishment as such holds no post hence they cannot for the purposes of Service Tribunals Act be treated as civil servants. In the absence of their being civil servants, the remedy lay before the forum other than the Service Tribunal. If they fell in the definition of 'workmen' the authorities providing them the redress were the appropriate authorities and there was no exclusion of their jurisdiction in the case. "

40. Later on, **in the case of WAPDA v. Muhammad Ashraf Naeem (1997 SCMR 1128)** this Court had an occasion to examine whether West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 would be applicable to the employees of WAPDA, notwithstanding the proviso to section 1(4)(c) of the West Pakistan WAPDA Act 1958, and the proposition was answered as follows:---

"9. This provision of law is in two parts. By the first, service under the Authority has been declared to be a service of Pakistan. The second part, which is distinct from the first is that every person holding a post under the Authority of the type described shall be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1973. The result of this bifurcation is that the employee shall be deemed to be in service of Pakistan but not necessarily a civil servant as defined in the Civil Servants Act. If the respondent stands excluded from the definition of the civil servant as contained in the Civil Servants Act, then the statutory provision made for the civil servants will not apply. In the case in hand, it appears that the respondent is excluded from the definition of employee under the Workmen's Compensation Act 1923 [clause (xix) to Schedule III

whereby persons connected with the generation, transformation and supply of electricity are to be treated as workmen for the purposes of Workmen's Compensation Act. (underlined by us to supply emphasis)

41. Whereas in the case of Wasim Ahmed Khan v. WAPDA (1997 SCMR 2000), once again the employees of WAPDA, holding post under the Authority, were deemed to be in service of Pakistan, for the purposes of STA, 1973, therefore, it was held that "removal or termination of service of such employee, falling within the mischief of section 17(1-A) of the Act, could not be called into question under Industrial Relations Ordinance, 1969 or the Essential Services (Maintenance) Act, 1952, or under any law for the time being in force, before any Court, Tribunal or commission". In the case of Chairman, WAPDA v. Abdul Hafeez Khan (2000 SCMR 1734), it was ruled by this Court that " every person holding a post under the WAPDA, not being a person who was on deputation to the Authority from any province, was to be deemed to be a civil servant for the purposes of the Service Tribunals Act, 1973". Again in the case of Muhammad Ibrahim Mangrio v. Chairman WAPDA (2001 SCMR 848) this Court examined the question "as to what is the rationale behind the legislative move in relation to employees of WAPDA in the context of the Constitutional mandate, contained in Articles 260, 240 and 212 of the Constitution" and answer to the query was that "it is an admitted position that the provisions contained in section 17(1-B) (ibid) are tantamount to making the declaration by the Legislature to the effect that the petitioners were in the 'Service of Pakistan' and deemed to be civil servants for the purposes of section 4 of the Service Tribunals Act (No. LXX of 1973). "

The position that all the employees of except those expressly excluded under the definition of "civil servant" are still being treated as civil servant and the Service Tribunal is ventured for adjudication of matters which pertains to terms and conditions of service. In this regard, case of the case Mrs. Wajiha Mohsin Shahzad v. National Highway Authority through Chairman and another (2012 P L C (C.S.) 1323) is referred for the purpose of substantiating that the service matters of employees of the National Highway Authority (NHA) are adjudicated by the Service Tribunal under Section 4 of the Service Tribunals Act, 1973. In this case, the Federal Service Tribunal addressed an appeal concerning dismissal from service under the National Highway Authority (Efficiency and Discipline) Rules, 1995, and adjudicated the matter without any challenge to its jurisdiction. The Tribunal, while deciding the matter, neither ruled nor implied that it was the wrong forum for adjudicating such service disputes. *This reference is confined to demonstrating that service-related issues of NHA employees are within the purview of the Service Tribunal, with no reliance placed on the case's merits or other findings.*

In conclusion, the answer to the query is that employees of the National Highway Authority (NHA), by virtue of Section 13(3) of the NHA Act,

1991, qualify as civil servants for the limited purpose of invoking the jurisdiction of Service Tribunals under the Service Tribunals Act, 1973. This designation, grounded in the legislative framework and judicial pronouncements and interpretation, aligns with constitutional requirements. The statutory nature of NHA service rules, coupled with the federal nexus of NHA's functions, and declaratory and deeming provisions under section 13 (3) reinforces the legal standing of its employees of NHA to seek redress through Service Tribunals for matters relating to their terms and conditions of service.

- 1- The All-Pakistan Services, as outlined in Article 240, refer to services that are common to both the Federation and the Provinces, explained by the Explanation under article 240 of the constitution.
- 2- (a) a person who is on deputation to the Federation from any province or other authority
 (b) a person who is employed on contract or on work-charged basis, or who is paid from contingencies;
 (a) a person who is "worker" or "workman" as defined under Factories Act 1934 or the Workman's Compensation Act 1932.

The End

RCBHC