

20.04.2022

Clerk of counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for appellant is busy before Hon'ble Peshawar High Court, Abbottabad Bench. Adjourned. Last opportunity given. To come up for arguments on 14.06.2022 before the D.B at Camp Court Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court, A/Abad



(Salah-Ud-Din)
Member (J)
Camp Court A/Abad

20th Oct, 2022

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

Arguments could not be heard due to paucity of time. To come up for arguments on 27.12.2022 before D.B.



(Fareeha Paul)
Member(Executive)



(Kalim Arshad Khan)
Chairman

15.06.2021

Due to cancellation of tour, Bench is not available. Therefore, case to come up for the same as before on 29.09.2021.


Reader

29.09.2021

Junior to counsel for the appellant and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.

Request for adjournment is made as learned counsel for the appellant is not in attendance. Case is therefore, adjourned to 18.01.2022 before the D.B at Camp court, Abbottabad



(Rozina Rehman)
Member(Judicial)
Camp Court, A/Abad


Chairman
Camp Court, A/Abad

18.01.2022

Clerk of learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Abbottabad Bench. Adjourned. To come up for arguments on 20.04.2022 before the D.B at Camp Court Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court A/Abad



(Salah-ud-Din)
Member (J)
Camp Court A/Abad

20.10.2020

Representative of appellant on behalf of appellant present.

Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Due to general strike of the bar, case case is adjourned to 16.12.2020 for arguments, before D.B at Camp Court, Abbottabad.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

*Due to COVID-19 case
is adjourned to 17-03-2021*



17.03.2021

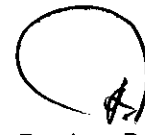
Junior to counsel for the appellant present.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Hafiz Muhammad Qasim Assistant for respondents present.

Former made a request for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court; granted. To come up for arguments on 15/6 /2021 before D.B at Camp Court Abbottabad.



(Atiq Ur Rehman Wazir)
Member (E)
Camp Court, A/Abad




Rozina Rehman)
Member (J)
Camp Court, A/Abad

19.12.2019

Appellant in person and Mr. Ziaullah, Deputy District Attorney alongwith M/S Syed Sadiq Hussain Shah, SMS and Shamim, Section Officer for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 18.02.2020 for arguments before D.B at Camp Court Abbottabad.

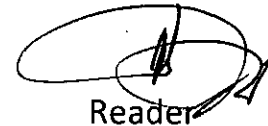

(Hussain Shah)
Member

Camp Court Abbottabad


(M. Amin Khan Kundi)
Member
Camp Court Abbottabad

18.2.20

Due to covid ,19 case to come up for the same on 14/4/20 at camp court abbottabad.


Reader

14.4.20

Due to summer vacation case to come up for the same on 20/10/20 at camp court abbottabad.


Reader

18.09.2019

Appellant alongwith counsel and Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith M/S Khurshid, Superintendent and Sajid, Superintendent for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment for arguments. Adjourned to 20.11.2019 for arguments before D.B at Camp Court Abbottabad.


(Hussain Shah)

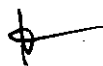
Member
Camp Court Abbottabad


(Muhammad Amin Khan Kundi)

Member
Camp Court Abbottabad

20.11.2019

Clerk to counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Khurshid for respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is indisposed. Adjourn. To come up for arguments on 19.12.2019 before D.B at Camp Court, Abbottabad.



Member



Member
Camp Court Abbottabad

18.06.2019

Appellant in person and Mr. Muhammad Bilal, DDA alongwith Mr. Muhammad Shamim, SO, Mr. Sajid, Agriculture Officer and Mr. Yasir Iqbal, Accounts Officer for respondents present. Written reply/comments on behalf of the respondents not submitted. Requested for adjournment. Adjourned but as a last chance. Case to come up for written reply/comments on 20.08.2019 before S.B at camp court Abbottabad.


(Ahmad Hassan)
Member

Camp Court A/Abad

20.08.2019

Appellant in person present. Mr. Muhammad Bilal learned Deputy District Attorney alongwith M/S Muhammad Khan Accounts Officer, Muhammad Khushid Superintendent, Muhammad Shameem SO and Yasir Iqbal Accounts Officer present. Written reply on behalf of respondents No.1 to 4 submitted. Learned DDA stated that respondent No.5 relies on the reply submitted on behalf of respondents No.1 to 4. Adjourn. To come up for rejoinder, if any, and arguments on 21.10.2019 before D.B at Camp Court, Abbottabad.


Member

Camp Court A/Abad

21.03.2019

Appellant in person present. Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. To come up for written reply/comments on 22.05.2019 before S.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

22.05.2019

Appellant in person and Mr. Muhammad Khurshid, Superintendent on behalf of respondents No. 1 to 4 alongwith Mr. Muhammad Bilal, Deputy District Attorney present and requested for further adjournment for filing of written reply. None present on behalf of respondent No. 5 therefore, notice be issued to respondent No. 5 with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned to 18.06.2019 for written reply/comments before S.B at Camp Court Abbottabad.

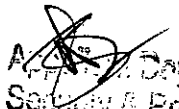



(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

22.02.2019

Counsel for the appellant Muhammad Younas present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Agriculture Department as Agriculture Officer. It was further contended that the appellant was promoted from the post of Agriculture Officer BPS-17 to the post of Agriculture Officer (Supervisory) BPS-17 vide order dated 16.02.2005. It was further contended that as per rules when the officer is promoted to the same Basic Pay Scale then he is entitled for one annual increment or one personal pay but the appellant was promoted from BPS-17 to the same BPS-17 however, he was deprived from one annual increment or personal pay therefore, the appellant filed departmental appeal on 14.04.2018 but the same was rejected on 18.10.2018 hence, the present service appeal on 27.11.2018. It was further contended that there is some delay in filing of departmental appeal but the matter pertain to money matter therefore, limitation does not run against the instant appeal therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 21.03.2019 before S.B at Camp Court Abbottabad.



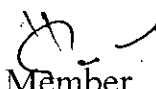

A. S. Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1430/2018

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|------------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 27/11/2018 | <p>The appeal of Mr. Muhammad Younas presented today by Mr. Muhammad Arshad Khan Tanoli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 27/11/18</p> |
| 2- | 4-12-2018 | <p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>25-01-2019</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |
| 15.01.2019 | | <p>Appellant in person present and seeks adjournment as his counsel is not in attendance. Adjourn. To come up for preliminary hearing on 22.02.2019 before S.B at camp court Abbottabad.</p> <p style="text-align: right;"> Member Camp Court Abbottabad</p> |

20.04.2022

Clerk of counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for appellant is busy before Hon'ble Peshawar High Court, Abbottabad Bench. Adjourned. Last opportunity given. To come up for arguments on 14.06.2022 before the D.B at Camp Court Abbottabad.

(Rozina Rehman)
Member (J)
Camp Court, A/Abad

(Salah-Ud-Din)
Member (J)
Camp Court A/Abad

20.10.2020

Representative of appellant on behalf of appellant present.

Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Due to general strike of the bar, case case is adjourned to 16.12.2020 for arguments, before D.B at Camp Court, Abbottabad.

(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad

(Rozina Rehman)
Member (J)
Camp Court, A/Abad

17.03.2021

Junior to counsel for the appellant present.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Hafiz Muhammad Qasim Assistant for respondents present.

Former made a request for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court; granted. To come up for arguments on ___/___/2021 before D.B at Camp Court Abbottabad.

(Atiq Ur Rehman Wazir)
Member (E)
Camp Court, A/Abad

Rozina Rehman)
Member (J)
Camp Court, A/Abad

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHUWA, PESHAWAR

Service Appeal No. 1430/2018

Muhammad Younas son of Mir Hussain, Ex. E.D.O /DDA Abbottabad.

...APPELLANT

VERSUS

Government of KPK through Secretary Finance Khyber Pakhtunkhwa, Peshawar and others.

...RESPONDENTS

SERVICE APPEAL

INDEX

| S.# | Description | Page No. | Annexure |
|-----|--|----------|-----------|
| 1. | Service appeal along with affidavit | 1 to 11 | |
| 2. | Copy of promotion order No. SOE(AD)V-8/2003/KC dated 18/06/2004 | 12 | "A" |
| 3. | Copy of promotion of Ishtiaq Ahmed | 13 | "B" |
| 4. | Copy of the Notification dated 29/04/1984 | 14 | "C" |
| 5. | Copy of Notification dated 09/07/2005 | 15-22 | "D" |
| 6. | Copy of Notification No. SOE(AD)17-358/2017 dated 05/03/2018 | 23 | "E" |
| 7. | Copy of judgment dated 23/01/2017 of this Honourable Tribunal | 24-28 | "F" |
| 8. | Copy of judgment of Supreme Court of Pakistan | 29-30 | "G" |
| 9. | Copy of seniority list | 31-34 | "H" |
| 10. | Copy of departmental appeal of the appellant dated 14/04/2018 | 35-65 | "I" |
| 11. | Copy of rejection letters dated 18/10/2018 and covering letter dated | 66-67 | "J" & "K" |

| | | | |
|-----|--|-------|-----------|
| | 29/10/2018 | | |
| 12. | Copy of letter respondent No. 2 Address to the respondent No. 1 dated 03/09/2018 | 68-69 | "L" |
| 13. | Copies of Comments dated 16/07/2018 and covering letter dated 08/08/2018 addressed to the respondent No. 2 | 70-73 | "M" & "N" |
| 14. | Wakalatnama | 74 | |


...APPELLANT

Through

Dated: 26-11-2018


(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHUWA, PESHAWAR

Service Appeal No. _____/2018

Muhammad Younas son of Mir Hussain, Ex. E.D.O Agriculture/ DD Agriculture
Abbottabad.

...APPELLANT

VERSUS

1. Government of KPK through Secretary Finance Khyber Pakhtunkhwa, Peshawar.
2. Secretary Agriculture, Livestock and Cooperation Department Peshawar.
3. Director General Agriculture (Extension) Peshawar.
4. District Director Agriculture Mandian Abbottabad.
5. District Accounts Officer, Abbottabad.

...RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF
SERVICE TRIBUNAL ACT 1974 FOR
DECLARATION TO THE EFFECT THAT THE
APPELLANT WAS PROMOTED FROM THE POST
OF AGRICULTURE OFFICER BPS-17 TO THE POST
OF AGRICULTURE OFFICER (SUPERVISORY) BPS-
17 WITH SPECIAL PAY OF RS. 150 P/M VIDE

PROMOTION ORDER NO. SOE(AD)V-8/2003/KC DATED 18/06/2004 AND THE APPELLANT WAS ENTITLED FOR GRANT OF ONE ADVANCE/ PREMATURE INCREMENT ON PROMOTION IN TO SAME SCALE BUT RESPONDENT -DEPARTMENT DID NOT ALLOW ONE ADVANCE / PREMATURE INCREMENT TO THE APPELLANT. A SIMILAR EMPLOYEE OF THE AGRICULTURE DEPARTMENT WHO WAS ALSO SIMILARLY PROMOTED HAS BEEN GRANTED ONE ADVANCE/ PREMATURE INCREMENT WITH EFFECT FROM 01/07/2005 IN PURSUANCE OF JUDGMENT DATED 23/01/2017 OF THIS HONOURABLE TRIBUNAL IN APPEAL NO. 1633/2011 BUT THE SAME BENEFIT IS NOT BEING EXTENDED TO THE APPELLANT. ON THE ANALOGY OF SIMILARLY PLACED EMPLOYEES. IN THIS RESPECT, RELIANCE IS PLACED ON JUDGMENT OF APEX COURT REPORTED 1996 SCMR 1185, 2005 PLC(CS) 368, 2006 PLC(CS) 11 AND 2009 SCMR-I.

=====

PRAYER; ON ACCEPTANCE OF THIS SERVICE APPEAL, THE IMPUGNED ORDER OF FINANCE DEPARTMENT KHYBER PAKHTUNKHWA NO.

FD(SOSR-I)2-123/2018 DATED 18/10/2018 MAY
KINDLY BE SET-ASIDE AND RESPONDENTS –
DEPARTMENT MAY GRACIOUSLY BE DIRECTED
TO ALLOW ONE ADVANCE/ PREMATURE
INCREMENT ON ACCOUNT OF PROMOTION IN
SAME SCALE I.E FROM AGRICULTURE OFFICER
BPS-17 TO AGRICULTURE OFFICER
(SUPERVISORY) BPS-17 W.E.F FROM 01/07/2005
TO 02/04/2013 AND PENSION CASE OF THE
APPELLANT MAY ALSO BE REVISED AFTER
TAKING INTO ACCOUNT THE SAID INCREMENT.
ANY OTHER RELIEF WHICH THIS HONOURABLE
SERVICE TRIBUNAL DEEM APPROPRIATE
UNDER THE CIRCUMSTANCES MAY ALSO BE
ALLOWED TO THE APPELLANT.

Respectfully Sheweth;-

Brief Facts giving rise to the instant service appeal are as
under; -

1. That the appellant was promoted from the post of
Agriculture Officer BPS-17 to the post of
Agriculture Officer (Supervisory) BPS-17 with
special pay of Rs. 150/- P/M on 18/06/2004. (Copy

of promotion order No. SOE(AD)V-8/2003/KC dated 18/06/2004 is attached as Annexure "A").

2. That another officer, namely Ishtiaq Ahmed Agriculture Officer Kohat was promoted from Agriculture Officer BPS-17 to the post of Agriculture Officer (Supervisory) BPS-17 with special pay Rs. 150/- P/M No. SOE(AD)V-2/2005/KC on 16/02/2005. (Copy of promotion of Ishtiaq Ahmed is annexed as Annexure "B").
3. That as per amendment dated 29/04/1984 made in the Civil Servants Pay Revision Rules, 1978, if a civil servant is promoted to a post in the same scale in his own line with the only difference that the higher post carries a special pay, he shall be allowed one advance increment in that scale with effect from the date of his promotion. (Copy of the Notification dated 29/04/1984 is enclosed as Annexure "C").
4. That the appellant approached the concerned office for grant of increment/ premature increment on account of promotion in the same scale. The appellant at the time of promotion in the same scale was at the ceiling stage. In this regard,

procedure for grant of increment/ premature increment at the ceiling stage has been mentioned in Finance Department dated 09/07/2005. But inspite of clear Notification the pay of the appellant has not fixed after taking into account the subject increment. (Copy of Notification dated 09/07/2005 is annexed as Annexure "D").

5. That a similar agriculture officer who was similarly placed/ promoted like the appellant has been granted one advance/ premature increment on account of promotion in the same scale as per Notification NO. SOE(AD)17-358/2017 dated 05/03/2018. (Copy of Notification No. SOE(AD)17-358/2017 dated 05/03/2018 is annexed as Annexure "E").
6. That the similar employee filed service appeal before this Honourable Tribunal for grant of one advance/ premature increment on promotion in the same scale which was decided by this Honourable Tribunal on 23/01/2017 and directed the respondents to that advance increment may be allowed to him.

7. That respondents' department challenged the judgment dated 23/01/2017 of this Honourable Tribunal before the Apex court, which has been upheld vide judgment dated 13/11/2017. (Copy of judgment dated 23/01/2017 of this Honourable Tribunal is attached as Annexure "F" and copy of judgment of Supreme Court of Pakistan is attached as Annexure "G").
8. That following this, the respondents' department allowed one advance/ premature increment to Ishtiaq Ahmed similarly placed employee vide notification No. SOE(AD) 17-358/2017 dated 05/03/2018.
9. That as per final seniority list of BPS-17 supervisory officers the appellant was at Serial No. 6 and Ishtiaq Ahmed was at serial No. 14. (Copy of seniority list is annexed as Annexure "H").
10. That the appellant filed departmental appeal to the respondent department for grant of one advance/ premature increment on the analogy of Ishtiaq Ahmed who is similarly placed employee as well as in the light of judgments of August Supreme

Court of Pakistan reported 1996 SCMR 1185, 2005 PLC (CS) 368, 2006 PLC (CS) 11 and 2009 SCMR-1 wherein Supreme Court of Pakistan held that once a point of law is decided by the Apex Court or Service Tribunal in a particular case that must be made applicable to all the employees who are similarly placed. (Copy of departmental appeal of the appellant dated 14/04/2018 is attached as Annexure "I").

11. That Departmental Appeal of the appellant has been regretted by respondent No. 1 on 18/10/2018 which was communicated to the appellant on 29/10/2018 by the office of respondent No. 2. (Copy of rejection letters dated 18/10/2018 and covering letter dated 29/10/2018 are attached as Annexure "J" & "K").
12. That feeling aggrieved, the instant appeal is filed inter-alia, on the following grounds:-

GROUND:

- a) That the appellant is entitled for grant of one advance/ premature increment as per Notification No. SOE(AD)/17-358/2017

dated 05/03/2018 and judgment dated 23/01/2017 of this Honourable Tribunal. Hence impugned rejection letter dated 18/10/2018 is liable to be set aside.

- b) That it is worth to mention here that the parent department of the appellant fully supported the case of increment of the appellant. (Copy of letter respondent No. 2 Addressed to the respondent No. 1 dated 03/09/2018 is enclosed as Annexure "L").
- c) That Director General Agriculture (Ext) Khyber Pakhtunkhwa. (Copies of Comments dated 16/07/2018 and covering letter dated 08/08/2018 addressed to the respondent No. 2 are attached as Annexure "M" & "N").
- d) That Govt. Notifications fully cover the case of the appellant, but the advance increment is not being allowed or adjusted as personal pay of the appellant.
- e) That as per precedent case law, the appellant is entitled for grant of one advance/ premature increment on account of promotion in the same scale as has been held

by Honourable Tribunal, in its judgment dated 23/01/2017. That the matter relates to terms and conditions of service. Hence, this Honourable Tribunal has jurisdiction to entertain the instant appeal.

- f) That the appellant has not been treated in accordance with law and his secured and guaranteed rights have been badly violated by the respondents' department.
- g) That the appellant is entitled for grant of advance increments from the date of his promotion to the Supervisory post of BPS-17 in terms of Notification dated 29/04/1984 with all arrears and benefits.
- h) That the appellant seek the permission of this Honourable Tribunal to reply on additional grounds at the time of hearing of this appeal.
- i) That there is no other efficacious and adequate remedy available to the appellant, except the present appeal by this Honourable Tribunal.

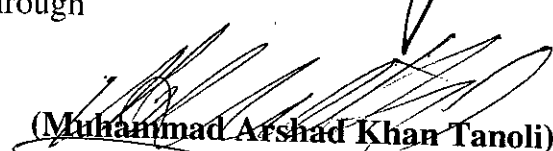
- j) That other points shall be raised before the Honourable Tribunal at the time of arguments.

It is, therefore, prayed that on acceptance of this service appeal, the impugned order of Finance Department Khyber Pakhtunkhwa No. FD(SOSR-I)2-123/2018 dated 18/10/2018 may kindly be set-aside and respondents -department may graciously be directed to allow one advance/ premature increment on account of promotion in same scale i.e from agriculture officer BPS-17 to agriculture officer (Supervisory) BPS-17 w.e.f from 01/07/2005 to 02/04/2013 and pension case of the appellant may also be revised after taking into account the said increment. Any other relief which this Honourable Service Tribunal deem appropriate under the circumstances may also be allowed to the appellant.

Dated: 26-11- /2018

Through


...APPELLANT


(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.


...APPELLANT

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHUWA, PESHAWAR

Service Appeal No. _____/2018

Muhammad Younas son of Mir Hussain, Ex. E.D.O /DDA Abbottabad.

...APPELLANT

VERSUS


Government of KPK through Secretary Finance Khyber Pakhtunkhwa, Peshawar and others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Muhammad Younas son of Mir Hussain, Ex. E.D.O /DDA Abbottabad, do hereby solemnly affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.


DEPONENT



ANNEX - "A"

12

GOVERNMENT OF NWFP
AGRIL:LIVESTOCK AND COOP:DEPTT:

Dated Peshawar, the June 18, 2004

NOTIFICATION.

NO.SOE(AD)V-8/2003/KC.

In pursuance of the recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Agricultural Officers (BS-17) to the post of Agricultural Officer (Supervisory) BS-17 with Special Pay of Rs. 150/-P.M. with immediate effect:-

| | |
|-----|--|
| 1. | Mr.Mehmood Khan, Agril:Officer, Mohmand Agency |
| 2. | Mr.Inayat-ur-Rehman ,PHLC Swabi |
| 3. | Mr. Inamullah Khan , Lower Dir |
| 4. | Mr.Majeedullah ,AO, Nizampur |
| 5. | Mr.Gul Muhammad, AHO O/O DOA Swat. |
| 6. | Mr.Muhammad Hanif,AHO O/O DOA, D.I.Khan |
| 7. | Mr. Ihsanullah , AO, O/O DOA, D.I.Khan. |
| 8. | Mr. Shafiq-ur-Rehman, DOA, Upper Dir |
| 9. | Mr. Fazli Rabbi, APPO, O/O DOA, Peshawar |
| 10. | Mr. Shadi Khan, AO.O/O DOA, D.I.Khan |
| 11. | Mr. Nizam-ud-Din, DOA, Upper Dir, |
| 12. | Mr. Saadullah Khan, Instructor ATI Peshawar. |
| 13. | Mr. Fazli Rehman, ADA, Orakzai Agency. |
| 14. | Mr. Abbas Khan, EADA, South Waziristan Agency. |
| 15. | Mr. Amir Khan, AO, O/O DOA, Lakki. |
| 16. | Mr.Muhammad Younas, APPO, O/O DOA, Abbottabad. |
| 17. | Mr. Sharifullah Khan, DOA, Buner. |
| 18. | Mr. Abdur Rashid, APPO, Mardan. |
| 19. | Mr. Said Aman, DOA, Charsadda. |
| 20. | Mr. Ghulam Muhammad, AO, O/O DOA, Lakki. |
| 21. | Mr. Sadiq Hussain Shah, DOA, Abbottabad. |
| 22. | Mr. Sanaullah Zar, AO, O/O DOA, Swabi. |
| 23. | Mr. Salahud-din, AO O/O DOA, Tank. |
| 24. | Mr.Muhammad Aslam, AO O/O DOA, Lakki. |

Attested
Muhammad Arshad Khan Tanoli
Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad

Sd-XXX
SECRETARY AGRICULTURE.

Endst. of even No. and date.

Copy forwarded for information and necessary action to:

1. The DG Agriculture(Extension) NWFP, Peshawar
2. The Accountant General, NWFP, Peshawar.
3. The Additional Accountant General(PR)Sub-Office, Peshawar.
4. The Principal, Agril:Training Institute, Peshawar.
5. The Director, Agriculture(Extension)FATA,NWFP, Peshawar.
6. The Project Director, PHLC Project, Swabi.
7. The EDO/DOA, Mansehra ,Swabi, Lower Dir, Swat, D.I.Khan, Peshawar, Upper Dir, Lakki Marwat, Buner, Abbottabad Mardan, Charsadda Tank , Nowshera ..
8. The District Accounts Officers, Mansehra ,Swabi,Lower Dir, Swat, D.I.Khan, Peshawar, Upper Dir, Lakki Marwat, Buner, Abbottabad Mardan, Charsadda Tank , Nowshera ..
9. The Agency Accounts Officer Mohmand Agency and SW Agency.
10. The EADA, Mohmand Agency and SW Agency.
11. Officers concerned.
12. PS to Secretary Agriculture.
13. PA to Dy:Secretary(Admn).

(AKHTAR ALI SHAH)
SECTION OFFICER-ESTT:

GOVERNMENT OF NWFP
AGRI. LIVESTOCK AND COOP. DEPT.

Dated Peshawar, the 16-2-2005

NOTIFICATION

NO. SOE(AD)V-2/2005/KC

In pursuance of the recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Agricultural Officers (BS-17) to the post of Agricultural Officer (Supervisory) BS-17 with Special pay of Rs. 150/-P.M. with immediate effect:-

| | |
|----|---|
| 1. | Said Mehmood, District Officer Agriculture, Bannu. |
| 2. | Mr. Ishtiaq Ahmad, APPO, Kohat. |
| 3. | Syed Riaz Ahmad Shah, District Officer Agriculture, Mansehra. |
| 4. | Siraj Muhammad, DGA, Mardan. |

Sd/-XXX

SECRETARY AGRICULTURE

Encls. No. SOE(AD)V-2/2005/KC

Dated Peshawar, the 16-2-2005

Copy forwarded for information and necessary action to:-

1. The Director General, Agriculture (Extension), NWFP, Peshawar.
2. The Executive District Officers (Agriculture) Bannu, Kohat, Mansehra and Mardan.
3. The District Accounts Officers, Bannu, Kohat, Mansehra and Mardan.
4. Officers concerned.
5. Personal file of the officers concerned.
6. PS to Secretary Agriculture.

Asad Ali
(ASAD ALI)

SECTION OFFICER-ESTT

Attested

Muhammad Asif Khan Tanoli
Advocate High Court
Office No. 33 Adjacent to
Distt Bar-Abbottabad

ANNEX - "C"

14

GOVERNMENT OF N.W.F.P.
FINANCE DEPARTMENT.

NOTIFICATION

Dated Peshawar, the 29th April, 1984.

No. FD(SR-I)1-8/76-vol: II. In exercise of the power conferred by Section 26 of the N.W.F.P. Civil Servants Act, 1973, the Governor, N.W.F.P. is pleased to make the following amendments in the NWFP Civil Services Pay Revision Rules, 1978 namely:-

AMENDMENT

In Rule 10, for sub-rule (2), the following shall be substituted:-

- (2) If a Civil Servant-----
 - i. at the time of his promotion to a higher post is already drawing pay, under the provisions of rule 8 in the pay scale of the higher post or in a pay scale above the pay scale of the promotion post; or
 - ii. before his promotion to a higher post from a post for which a lower and a higher pay scale has been prescribed, is already drawing pay in the pay scale of the higher post; or
 - iii. is promoted to a post in the same scale in his own line with the only difference that the higher post carries a special pay; or
 - iv. is promoted to a higher post where higher and lower post carry the same scale.

he shall be allowed one advance increment in that pay scale with effect from the date of his promotion.

These orders shall take immediate effect.

Sd/- Secy. to Govt. NWFP,
Finance Department.

Ends. No. FD(SR)1-8/76-vol: II Dated Peshawar 29.4.1984.

Copy forwarded for information to:

- (4) All Heads of Attached Department in NWFP.

Sd/- Add: Secretary-I
Finance Department.

Endst. No. FD(SR-I)1-8/76-vol: II Dated Peshawar 29th April, 1984

The Accountant General, NWFP, Peshawar

Sd/- Section Officer-SR.I
D. A. Tarnab, the 8.5.1984.

Ends. No. 7254-79/3/67-B/E/MGR.

Copy to:

- 1. All Directors of Agri. Res. in NW.F.P.
- 2. All Heads of Section. (3) All P.L.S PL-480 Projects, (4) A.A.O. for information and necessary action.
- 4. The A.A.Q. II. Tarnab.

Sd/- Administrative Officer,
for Director General,
Agricultural Research, NWFP,
Tarnab, Peshawar.

Attested

Muhammad Asghar Khan Jang
Advocate High Court
Office No. 33 Adjacent to
D. A. Tarnab

NO.FD(PRC)1-1/2005

Dated Peshawar the, July 09, 2005.

From :- Secretary to Govt.of NWFP,
Finance Department.

To

1. All Administrative Secretaries to Govt.of NWFP.
2. The Senior Member, Board of Revenue, NWFP.
3. The Secretary to Governor, NWFP.
4. The Secretary to Chief Minister, NWFP.
5. The Secretary, Provincial Assembly, NWFP.
6. All Heads of Attached Departments NWFP.
7. All District Nazims/ District Coordination Officers/
Political Agents/ District & Session Judges NWFP.
8. The Registrar, Peshawar High Court, Peshawar.
9. The Chairman, NWFP, Public Service Commission.
10. The Chairman, NWFP, Services Tribunal, Peshawar.
11. The Secretary, Board of Revenue, NWFP.

**SUBJECT:- REVISION OF BASIC PAY SCALES, ALLOWANCES
AND PENSION OF CIVIL EMPLOYEES (BPS 1-22) OF
THE NWFP GOVERNMENT (2005).**

Dear Sir,

I am directed to state that the Governor NWFP has been pleased to sanction the revision of Basic Pay Scales, Allowances and Pension w.e.f 1st July 2005, for the civil employees of the Provincial Government as detailed in the following paragraphs :-

PART-I (BASIC PAY SCALES)

2. REVISED BASIC PAY SCALES

The revised Basic Pay Scales, 2005 shall replace the exiting Basic Pay Scales, 2001 as shown in Annexure to this letter.

3. FIXATION OF PAY OF THE EXISTING EMPLOYEES:

- (i) The basic pay of an employee in service on 30-6-2005 shall be fixed in the Revised Basic Pay Scale on point to point basis i.e at the stage corresponding to that occupied by him above the minimum of 2001 Basic Pay Scales.
- (ii) The corresponding stage for fixation of basic pay in the aforesaid manner in respect of an employee whose pay was fixed beyond the maximum of the relevant scale as a result of discontinuation of move over policy under the 2001 Basic Pay Scales Scheme shall be determined on notional extension basis i.e by treating the amount of personal pay drawn by him on 30th June, 2005, as part of his basic pay

Attested

[Signature]
A Advocate High Court
Office of the I & Accountant
Peshawar

(16)
scale and the amount beyond the maximum of the prescribed stage in the revised Basic Pay Scales shall be allowed as personal pay.

4. **ANNUAL INCREMENT:**

Annual increment shall continue to be admissible subject to the existing conditions, on 1st of December each year.

PART-II (ALLOWANCES)

5. **SPECIAL ADDITIONAL ALLOWANCE:** Special Additional Allowance shall continue to be admissible at frozen level on exiting conditions.

6. **SPECIAL RELIEF ALLOWANCE AND ADHOC RELIEF:**

Special Relief Allowance and Adhoc Relief sanctioned w.e.f 1.7.2003 and 1.7.2004 respectively shall stand frozen at the level of their admissibility as on 30-6-2005 and the amount shall continue to be admissible to the entitled recipients until further orders but it will cease to be admissible to new entrants joining Government service on or after 1.7.2005 as well as to those employees to whom it was ceased to be admissible under the existing conditions.

7. **HOUSE RENT ALLOWANCE:**

House Rent Allowance shall be admissible with reference to the Revised Basic Pay Scales, 2005 subject to the existing conditions.

8. **MEDICAL ALLOWANCE:**

Medical Allowance shall be admissible @ Rs. 425/- p.m subject to the existing conditions.

9. **CONVEYANCE ALLOWANCE:**

(a) Conveyance Allowance shall be admissible on revised rates as follows :

| | RATES (RS. PM) |
|-----------|----------------|
| BPS | 340 |
| BPS-1-4 | 460 |
| BPS 5-10 | 680 |
| BPS 11-15 | 1240 |
| BPS 16-20 | |

(b) Conveyance Allowance @ Rs. 1240/- per month shall also be admissible to those BPS-21 & 22 officers who are not sanctioned official vehicle.

Attached

Muhammad
Director
Office No.
2000
Khan, Tanoli
Court
Adjacent to
Lahore
abad

10. **OTHER SPECIAL PAYS/ SPECIAL ALLOWANCES:**

The rates of Special Pays and Special Allowances shall be revised as detailed below:-

(17)

(i) **ENTERTAINMENT ALLOWANCE**

| | EXISTING | REVISED |
|--------|--------------|--------------|
| BPS-19 | Nil | Rs. 500/- PM |
| BPS-20 | Rs. 480/- PM | Rs. 600/- PM |
| BPS-21 | Rs. 525/- PM | Rs. 700/- PM |
| BPS-22 | Rs. 725/- PM | Rs. 975/- PM |

(ii) **DAILY ALLOWANCE**

| | EXISTING | | REVISED | |
|-----------|----------|---------|----------|---------|
| | Ordinary | Special | Ordinary | Special |
| BPS 1-4 | 80/- | 110/- | 125/- | 200/- |
| BPS 5-11 | 100/- | 120/- | 155/- | 220/- |
| BPS 12-16 | 180/- | 200/- | 280/- | 365/- |
| BPS 17-18 | 320/- | 350/- | 500/- | 640/- |
| BPS 19-20 | 400/- | 450/- | 625/- | 825/- |
| BPS 21-22 | 450/- | 550/- | 700/- | 1000/- |

Presently special rates are allowed at 15 specified stations/cities. The Special rates shall also be allowed at Muzaffarabad & Mirpur AJ&K.

Attested

(iii) **TRANSPORTATION/MILEAGE ALLOWANCE**

| | EXISTING | REVISED |
|--|---|--|
| <u>Transportation</u> | | |
| i) Motor Car | Rs.1.20/- per k.m | Rs. 2/- per k.m |
| ii) Motor Cycle/Scooter | Rs.0.40/- per k.m | Rs. 1/- per k.m |
| <u>Mileage Allowance</u> | | |
| i) Personal Car/Taxi | Rs.3/- per k.m | Rs. 5/- per k.m |
| ii) Motor Cycle/Scooter | Rs.1/- per k.m | Rs. 2/- per k.m |
| iii) Bicycle/Animal Back/ Foot. | Rs.0.75/- per k.m | Rs. 1/- per k.m |
| iv) Public Transport. | Rs. 0.30/- per k.m (BPS-6 & below) Rs.0.50 per k.m (BPS-7 & above) | Rs. 1/- per k.m Rs.1/- per k.m |
| <u>Travel by Air</u> | Government servants in BPS-17 and those in receipt of pay of Rs. 5400 and above. | Government Servants in BPS-17 and above. |
| <u>Carriage of Personal effects on Transfer/ Retirement</u> | Paisa 0.148 per k.m per k.g (or 2.96 paisa per k.m per unit of 20 k.gs). | Rs. 0.008 per k.m per k.g. |

Attested
Advocate High Court
Office No 33 Adjacent
Distt. Mirpur Abbottabad

18

iv) Qualification Pay

| | Existing | Revised |
|-------------------------|--------------|---------------|
| SAC Accountant | Rs.200/- PM | Rs.400/-PM |
| Part-III(ICMA/ICWA) | Rs.300/-PM | Rs.400/-PM |
| ICMA/ICWA | Rs.800/-PM | Rs.1200/-PM |
| Chartered Accountant | Rs.800/-PM | Rs.1300/-PM |
| Staff College/NDC | Rs.750/- PM | Rs. 1000/- PM |
| Advanced Course in NIPA | Rs. 200/- PM | Rs. 500/- PM |

(v) SENIOR POST ALLOWANCE

| | Existing | Revised |
|--------|---------------|--------------|
| BPS-20 | Rs. 850/- PM | Rs.1100/- PM |
| BPS-21 | Rs. 925/- PM | Rs.1200/- PM |
| BPS-22 | Rs. 1200/- PM | Rs.1600/- PM |

(vi) DEPUTATION/ ADDL. CHARGE ALLOWANCE/SPECIAL ALLOWANCE ON CURRENT CHARGE

| | Existing | Revised |
|---|---|---|
| Deputation Allowance/ Special Allowance on Current Charge | @ 20% of the Basic Pay subject to maximum of Rs. 2000/- PM and 1500/- p.m respectively. | @ 20% of the Basic Pay subject to maximum of Rs. 6000/- PM. |
| Additional Charge Allowance. | @ 20% of Basic Pay | @ 20% of the Basic Pay subject to maximum of Rs. 6000/- PM. |

(vii) UNIFORM ALLOWANCE

| | Existing | Revised |
|--------------------|--------------|-------------|
| Nurses upto BPS-16 | Rs. 150/- PM | Rs. 300/-PM |

(viii) PSP UNIFORM ALLOWANCE

| | Existing | Revised |
|--|---------------|----------------|
| | Rs. 250/- p.m | Rs. 1200/- p.m |

(ix) NIGHT DUTY ALLOWANCE

| | Existing | Revised |
|------------------------|----------------------|--------------------|
| For Assistants/ Clerks | Rs. 8/- per night | Rs. 10/- per night |
| Drivers/ DRs | Rs. 4/- per night | Rs. 5/- per night |
| Naib Qasids. | Rs. 3.50/- per night | Rs. 5/- per night |

Attested
 Muhammad Yousaf
 Advocate
 Office No 33
 Dist 3rd

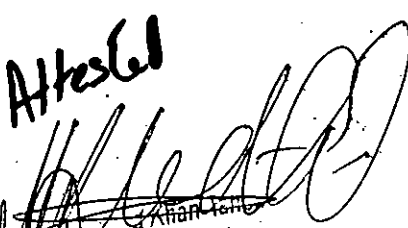
(x) SPECIAL PAY TO PSs/PAs

19

| | Existing | Revised |
|--|--------------|---|
| Private Secretary to Minister BPS-18 | Rs. 300/- PM | Private Secretary to Minister Rs.500/- PM |
| Private Secretary to Minister BPS-17 | Rs. 375/- PM | |
| Private Secretary to Minister BPS-16 | Rs. 300/- PM | |
| Private Secretary to Secretaries. | Rs. 225/-PM | Rs.300/-PM |
| P.A to Minister | Rs. 150/- PM | Rs. 200/- PM |
| P.A to Chief Secretary/ Addl. Chief Secretary/ Secretaries/ Addl. Secretaries. | Rs. 120/- PM | Rs. 160/- PM |

(xi) INSTRUCTIONAL ALLOWANCE

| Existing | Revised |
|---|--|
| 20% of the Basic Pay subject to maximum of Rs. 2000/- PM. | (i) 20% of the Basic Pay subject to maximum of Rs. 5000/- per month to those Instructors imparting in service training to BPS-17 and above officers. |
| | (ii) 20% of the Basic Pay subject to maximum of Rs. 3000/- per month to those Instructors imparting in service training to employees up to BPS-16 |

Attested

Muharram, 1427 AH
Advocate High Court
Office No 33 Adjacent to
Distt Court Abbottabad

(xii) WASHING ALLOWANCE FOR POLICE FORCE

| Existing | Revised |
|-------------|--------------|
| Rs. 50/- PM | Rs. 100/- PM |

(xiii) CONTINGENT ALLOWANCES

The following two contingent allowances admissible to Naib Qasids/ Qasids/Drivers/ Daftaries/ Farashs/ Chowkidars/ Sweepers/ Sweepress / Ward Orderly/Bishti (Water carrier) and Mali shall stand discontinued and in lieu thereof such entitled categories shall be allowed a new allowance called as Integrated Allowance @ Rs. 150/- PM w.e.f 1-7-2005

| | Existing | Revised |
|-------------------|--|--------------|
| Washing Allowance | Rs. 30/- PM | Rs. 150/- PM |
| Dress Allowance | i. Naib Qasids Rs: 40/- PM | |
| | ii. Farash/Chowkidar/ Sweeper. Rs. 35/- PM | |
| | iii. Sweepress Rs. 25/-PM | |

11. The following two Special Pays in respect of Civil Government employees shall stand abolished under this scheme:

| Name of Special Pays | Present Rate | |
|---|---------------------------------------|-------------|
| i. Cash Handling Special Pay. | Above Rs.5000 and upto Rs. 1,00,000/- | Rs. 50/- PM |
| | Above Rs. 1,00,000 ² | Rs. 75/- PM |
| Special Pay to Photostat Operators of Civil Secretariat | Rs. 30/- PM | |

PART-III (PENSION)

12. Commutation shall be admissible upto a maximum of 35% of Gross Pension, at the option of the pensioner. Admissibility of monthly pension shall be increased from the existing 60% to 65% of Gross Pension.

13. An increase @ 10% Shall be allowed on the amount of Pension being drawn by the existing pensioners as well as to those Government servants who would draw pension under the Revised Basic Pay Scales, 2005.

14. The increase allowed on pension @ 15% and 8% w.e.f 1-7-2003 and 1-7-2004 respectively shall not be admissible to the Government servants who would draw pension under the revised Basic Pay Scales, 2005.

15.

OPTION:

- a. The Department/office to which an employees belongs and/or on whose pay roll he is borne shall obtain an option in writing from such employee within **60 days** commencing from the date of issue of this letter and communicate it to the concerned Accounts Office/ DDO, as the case may be, either to continue to draw salary in the existing Basic Pay Scales in which he is already drawing or in the Revised Basic Pay Scales and Pension/ Commutation scheme, 2005 as specified in this letter. Option once exercised shall be final.
- b. An existing employee as aforesaid, who does not exercise and communicate such an option within the specified

AT

Attested
 Signature
 Deputy Commissioner
 Office No. 33 Adjacent to
 District High Court
 District

(21)
time limit, shall be deemed to have opted for Revised
Basic Pay Scales & Pension/Commutation Scheme 2005.

16. All existing rules/orders on the subject shall be deemed to have been modified to the extent indicated above. All existing rules/orders not so modified shall continue to be in force under this scheme.

17. The Autonomous/Semi Autonomous Bodies will have the option to adopt this pay package provided they have adopted in totality the Basic Pay Scale Scheme/Pension scheme and if their resources so permit as no additional grant will be provided by the Provincial Government. It will not be applicable to those employees of Bank of Khyber and Public Sectors Corporations and those employees who are governed by the Industrial Relations Ordinance 1969 and/or whose financial terms of service are settled through Collective Bargaining Agents. In case of Autonomous/Semi Autonomous Bodies where employees are allowed different pay scales/allowances, the revision of the existing pay scales of their employees shall not be made without consultation of the Finance Department.

18. **Anomalies:** An Anomaly Committee in the Finance Department comprising Additional Finance Secretary (Regulation), Additional Secretary (Regulation) Establishment Department and Deputy Secretary (Regulation), Finance Department shall be set up to resolve the anomalies, if any, arising in the implementation of this letter.

Approved
[Signature]
Munir Ahmad
Advocate High Court
Office No 33 Adjacent to
Dist Bar Abbotabad.

Yours faithfully

[Signature]
(Abdul Latif)
Deputy Secretary (Reg.)

ENDST.NO & DATE EVEN

A copy is forwarded for information to :-


1. The Secretary Finance Department, Government of Punjab, Sindh and Balochistan, Lahore, Karachi and Quetta.
2. All Autonomous/Semi Autonomous Bodies in NWFP.

[Signature]
Deputy Secretary (Reg.)

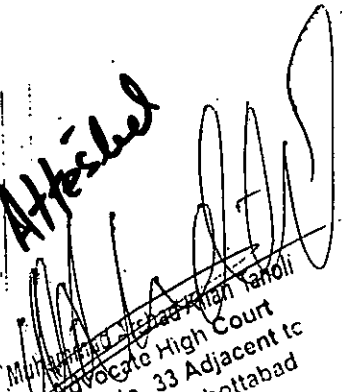
(20) (D)
ENDST.NO & DATE EVEN

A copy is forwarded for information to :-

1. The Accountant General, NWFP.
2. All District & Agency Accounts Officers in NWFP.
3. The District Accounts Officer (Treasury Wing) Peshawar.
4. The Private Secretary to Minister Finance, NWFP.
5. The Private Secretary to Secretary/P.As to Addl. Secretaries/
Deputy Secretaries in Finance Department.
6. The Director, Local Fund Audit, Peshawar.
7. The Director, EDPC, Finance Department.
3. All Section/Budget Officers in Finance Department.


(Aurangzeb Jadoon)
Section Officer (SR.I)

Attached


Muhammad Mehaad Khan Tandi
Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad



ANNEX - "E" (23)
GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the March 5, 2018

NOTIFICATION

NO.SOE(AD)/17-358/2017:- In pursuance of the judgment of the Khyber Pakhtunkhwa Service Tribunal dated 23.01.2017 in service appeal No.1633/2011 and Finance Department letter No.SO(Lit-II)FD/2-1259/2011 dard 16/02/2018, sanction is hereby accorded to the grant one advance increment on promotion from the post of Agriculture Officer (BS-17) to the post of Agriculture Officer (BS-17 Supervisory) with special pay of Rs.150/PM vide Notification No.SOE(AD)V-2/005/KC dated 16.02.2005 in respect of Mr.Ishtiaq Ahmad, Ex-District Officer Agriculture, Kohat for the purpose of pay and pensioner benefits with effect from 01.07.2005.

Sd/-
SECRETARY AGRICULTURE.

Endst of even No. & Date.

Copy forwarded for information and necessary action to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The DG, Agricultural Extension, Khyber Pakhtunkhwa, Peshawar w/r to his memo: No.21918 dated 18/123.2017 for information and further necessary action.
3. Ex-Officer concerned.
4. Personal file of the Officer.
5. PS to Secretary Agriculture.
6. Master file.

(Signature)
(MANZOOR AHMAD AFRIDI)
SECTION OFFICER-ESTT.

DIRECTOR GENERAL
AGRICULTURE (EXTENSION) KHYBER PAKHTUNKHWA PESHAWAR

Ends, No/Lit/ 5453-59/DG Dated Peshawar the 09/03 /2018

Copy forwarded to:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Additional Accountant General (PR) Khyber Pakhtunkhwa Peshawar.
3. Director Agriculture (Extension) FATA Peshawar.
4. District Director Agriculture Kohat.
5. District Account Officer Kohat.
6. Superintendent Establishment HQ Office.
7. Mr. Ishtiaq Ahmad Ex-Director Agriculture FATA.

For information & necessary action.

(Signature)
ASSTT, ACCOUNTS OFFICER

(Signature)
Attest
Muhammad Arshad Khan Tahir
Advocate High Court
Office No 33 Adjacent to
District Court Peshawar

ANNEX-"F" 1

24

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**



A.W.F. Peshawar
Service Tribunal
No. 1638
Date 3/10/11

Appeal No. 1633/2011

Ishtiaq Ahmad, District Officer Agriculture Kohat.
(Appellant)

Versus

1. Govt of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa, Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. Secretary Agriculture, Livestock & Coordination Department Khyber Pakhtunkhwa Peshawar.

(Respondents)

Ex-Parte
1-08-2012
Restore
16-01-2014

Appeal under section 4 of the KHYBER PAKHTUNKHWA Service Tribunal Act, 1974 for the grant of advance increment to the appellant on his promotion to the post of Agriculture Officer (Supervisory) BPS-17 for which his departmental representations remained under consideration however it was finally vide letter dated 27.8.2011 communicated on 7.9.2011.

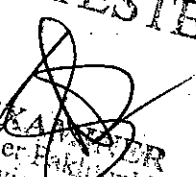
Prayer in appeal:

On acceptance of this appeal the impugned order dated 13.8.2011 & 27.8.2011 may please be set aside and the appellant may please be held entitled to the grant of one increment on promotion to the post of Agriculture Officer (Supervisory) BPS-17 vide notification dated 16.2.2005 with all arrears and benefits.

Respectfully Submitted:

1. That the appellant while serving as Agriculture officer BPS-17 was considered for promotion by the departmental promotion committee and recommended as such, he was accordingly promoted as Agriculture Officer (Supervisory) BPS-17 with special pay of Rs. 150/- P. M vide notification No SOE (AD)

ATTESTED



Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

25



| Sr. No | Date of order/ proceedings | Order or other proceedings with signature of Judge or Magistrate |
|--------|----------------------------|---|
| 1 | 2 23.01.2017 | 3 <u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u> Appeal No. 1633/2011 Ishtiaq Ahmad Versus Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar and others. <u>JUDGMENT</u> <u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u> Counsel for the appellant and Mr. Ziaullah, Government Pleader alongwith Zakiullah, Senior Auditor for respondents present. 2. Ishtiaq Ahmad District Officer Agriculture Kohat hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for the grant of advance increments which was not allowed to him when promoted as Agriculture Officer (Supervisory) BPS-17 for which his departmental appeal/representation was finally regretted vide order dated 27.08.2011 communicated to the appellant on 07.09.2011 and hence the instant service appeal on 03.10.2011. 3. Brief facts of the case of the appellant are that he was serving as Agriculture Officer BPS-17 when promoted as Agriculture Officer (Supervisory) BPS-17 with Special Pay of Rs. 150/- per month vide notification dated 16.02.2005. That the appellant was entitled to one advance increment in view of |

ATTESTED


KHYBER PAKHTUNKHWA
Service Tribunal,
Peshawar

Khyber Pakhtunkhwa Civil Services Pay Revision Rules, 1978

amended on 29.04.1984 which was not allowed to the appellant as he was drawing his salary at the ceiling of BPS-17. That the appellant became entitled to the grant of promotion and increment on the strength of Finance Department notification dated 09.07.2005 but he was not granted the same while similarly placed junior officers, promoted later on in the year 2008, were granted the said increment. That the matter was agitated before the competent authority including departmental appeal which was regretted on 27.08.2011 communicated to the appellant on 07.09.2011 and hence the instant service appeal on 03.10.2011.

4. Learned counsel for the appellant has argued that at the time of the said promotion of the appellant he was drawing maximum pay and was therefore not granted the said increment. That in view of notification dated July 09, 2005 Basic Pay Scales, Allowances and Pension were revised and civil servants drawing pay at the maximum were allowed annual increment in the shape of personal pay. That according to the said notification the said revision was effective from 1st July, 2005 but the appellant was not given benefit of the same and that it was in the year 2008, ^{when} ~~that~~ similarly placed officers, junior in service to the appellant were promoted and they were granted the benefits of such promotions on the basis of the notification referred to above. That the appellant is entitled to similar treatment as extended to officers who were later on promoted.

5. Learned Government Pleader has argued that at the time

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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of promotion of the appellant the notification dated 09.07.2005 regarding revision of pay etc. was not existing ^{and} as such the appellant was not entitled to the benefits of such a notification which was made lateron.

6. We have heard arguments of learned counsel for the parties and perused the record.

7. It is not disputed before us that the appellant was promoted as Agriculture Officer (Supervisory) on 16.02.2005 while the notification dated 09.07.2005 was given effect from first July, 2005 i.e almost five months after the promotion of the appellant. It is also not disputed that junior colleagues of the appellant were promoted as Agriculture Officers (Supervisory) on 27.02.2008 and they were given benefits of the said notification dated 09.07.2005 and as a consequence thereof salaries of the junior officers were computed higher than the appellant. According to letter dated 18.09.1995 issued by the Secretary to Government of Khyber Pakhtunkhwa Finance Department senior and junior positions are to be determined with reference to the date of promotion or appointment to the higher pay scale/post in the same service group or cadre. It is further laid down that the pay of the senior officer shall not be less than pay of junior officer before the revision/re-fixation of pay except for the cases of personal increase of pay specifically granted to a government servant which shall not be treated as a cause of anomaly for others.

8. The increase in pay of junior officer referred to above is not an increase in pay specifically granted to the said

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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government servant and is in fact a routine increase on the basis of revision in pay rules vide notification dated 09.07.2005.

9. The admitted position before us which requires determination is that the appellant was promoted on 16.02.2005 and as per the rules then in vogue he was not entitled to increase in pay in the shape of one advance increment which became available to all civil servants w.e.f. 01.07.2005 on the strength of notification dated 09.07.2005. The respondents were thus obliged to have re-fixed the pay of the appellant by considering him entitled to the benefits attached to his promotion w.e.f. 01.07.2005. We therefore hold that the case of the appellant for the purpose of fixation of pay and attached benefits including pensionary benefits shall be considered w.e.f. 01.07.2005. We therefore hold that the case of the appellant for the purpose of fixation of pay and attached benefits including pensionary benefits shall be considered w.e.f. 01.07.2005 and as if the appellant was promoted as Agriculture Officer (Supervisory) BPS-17 on the said date for the purpose of pay and pensionary benefits. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Announced *Sd/- M. Azim Khan Afzidi,*
23.01.2017 *Chairman*

Sd/- M. Amir Nazki,
Members

Date of Presentation of Application *29/12/17*
Number of Words *2000*
Copying Fee *12/-*
Urgent *12/-*
Total *24/-*
Name of Copyist *[Signature]*
Date of Completion of Copy *29-12-17*
Date of Delivery of Copy *29-12-17*

Certified to be true copy
[Signature]
JUDGE
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MAQBOOL BAQAR

CIVIL PETITION NO. 334-P OF 2017

(Against the impugned dated 23.01.2017 of the KPK Service Tribunal, Peshawar passed in Appeal No. 1633/2011)

Govt. of KPK thr. Secretary Finance KPK Peshawar & Petitioner(s)
others

VERSUS

Ishtiaq Ahmad

Respondent(s)

For the Petitioner(s)

: Mian Arshad Jan, Addl. AG KPK

For the Respondent(s)

: Not Represented

Date of Hearing

: 13.11.2017


ORDER

EJAZ AFZAL KHAN, J. This petition for leave to appeal has arisen out of the judgment dated 23.01.2017 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar whereby it allowed the appeal filed by the respondent.

2. Learned Additional Advocate General appearing on behalf of the petitioners by referring to the merits of the case contended that the prayer of the respondent being well beyond relevant date could not have been considered for grant of pensionary benefits but when we asked him to leap over the barrier of limitation and explain delay of 112 days in filing the petition, he could not advance any reason much less sufficient justifying condonation of delay of 112 days. We, in the circumstances, do not feel persuaded to interfere with the impugned

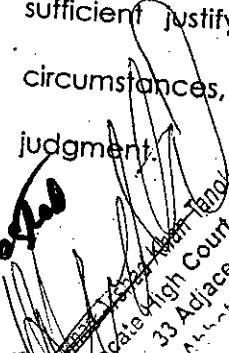
judgment.

ATTESTED

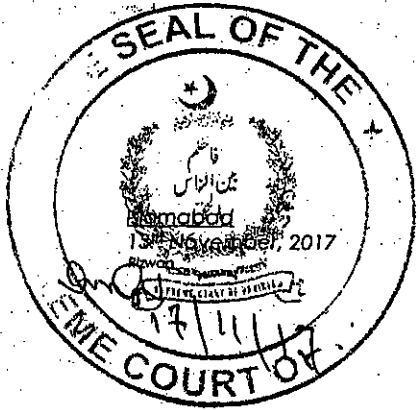

Court Associate
Supreme Court of Pakistan
Islamabad

Q/W

Attested


Court Associate
Supreme Court of Pakistan
Office No 33 Adjacent to
Dist. Peshawar

3. For the reasons what has been discussed above, we dismiss this petition together with the CMAs for condonation of delay and suspension of the impugned judgment.



Sd/-Ejaz Afzal Khan, J
Sd/-Maqbool Baqar, J
Certified to be True Copy

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

Attested
[Signature]
Mr. Ejaz Afzal Khan, Talwar
High Court
Office No. 33 Adjacent to
Court House, Abbottabad

ANNEX-16 H (31)

No.18/33/Estt/ 9627-54 /DG

Dated Peshawar, the 25/7 /2008.

To

1. The Director Agriculture, (Ext) FATA, Peshawar.
2. The Principal, ATI, Peshawar.
3. The DDA (Information) Peshawar.
4. All DOA's in NWFP.

Subject: SENIORITY LIST BS-17 SUPERVISORY OFFICERS AS STOOD ON 1.6.2008.

Memo:

You are advised to circulate the same amongst all the BS-17 Supervisory Officers working under your control. Any omission / error if any may be intimated within a week's time positively.

This should be treated as Most Urgent.

Encl: (As Above).

[Signature]
 DIRECTOR GENERAL
 AGRICULTURE (EXTENSION)
 NWFP, PESHAWAR.

Endst.No.18/33/Estt/ /DG, Dated Peshawar, the /2008.

Copy along with seniority list is forwarded to the Section Officer (Establishment) Government of NWFP, Agriculture Department, Peshawar w/r to his office letter No.SOE (AD) 2(3)391/2007 dated 1.7.2008.

[Signature]
 DIRECTOR GENERAL

Attested
[Signature]
 Advocate High Court
 Office No 33 Adjacent to
 Dist Bar Abbottabad

[Signature]
 (9)

(32)

SENIORITY LIST OF BPS-17 (SUP) OFFICERS OF AGRICULTURE EXTENSION DEPARTMENT ON 01.06.2008.

| S.No | Name & designation of officers | Educational / qualification | Date of birth & domicile | Date of 1 st entry into Govt. service | Up-gradation / promotion to BS-17 | Promotion to the present post/BPS | | Remarks |
|------|---|---|---------------------------|--|-----------------------------------|-----------------------------------|------------|---------|
| | | | | | | Date | BPS | |
| 1 | 2 | 3 | 4 | 5 | 6 | 9 | 10 | 11 |
| 1 | Nazimuddin, DOA, L/Dir (ops) | M.Sc Agri: Agronomy | 2.5.1952 Dir | 13.1.1977 Agri: Officer | 15.12.81 Direct | 18.06.2004 | 17 Sup. | |
| 2 | Saadullah Khan, Junior Instructor, ATI, Pesh | M.Sc Agri: Soil Science | 24.5.1954 Bannu | 13.1.1977 Agri: Officer | 1.7.77 Direct | 18.06.2004 | 17 Sup. | |
| 3 | Fazli Rahim Bangash, Asstt Director Agri: Orakzai. | B.Sc Hons: Agri: Plant Breeding & Genetics | 2.4.1950 Khyber Agency | 14.1.1977 Agri: Officer | 1.7.77 Direct | 18.06.2004 | 17 Sup. | |
| 4 | Abbas Khan, EADA, Wana. | B.Sc Hons Agri: | 13.8.1951 S.W. Agency | 14.1.1977 Agri: Officer | 1.7.77 Direct | 18.06.2004 | 17 Sup. | |
| 5 | Amir Khan, Asstt Agronomist, Kohat. | M.Sc Hons Agri: Chemistry | 1.5.1953 L. Marwat | 14.1.1977 Agri: Officer | 1.7.77 Direct | 18.06.2004 | 17 Sup. | |
| 6 | Muhammad Younas, DOA, Abbottabad. | M.Sc Hons: Agri: Chemistry | 3.4.1953 Abbottabad | 15.1.1977 Agri: Officer | 23.8.83 Direct | 18.06.2004 | 17 Sup. | |
| 7 | Abdur Rashid, EADA, Mohmand Agency. | M.Sc Hons: Agri: Plant Breeding & Genetics | 1.1.1954 Swal | 2.1.1977 Agri: Officer | 23.8.83 Direct | 18.06.2004 | 17 Sup. | |
| 8 | Said Aman, DOA, Charsadda (ops) | M.Sc Hons: Agri: | 5.5.1952 Charsadda | 27.1.1977 Agri: Officer | 23.8.83 Direct | 18.06.2004 | 17 Sup. | |
| 9 | Ghulam Muhammad, DOA, Lakki Marwat (ops) | M.Sc Agri: Agronomy | 18.10.1951 Bannu | 3.1.1980 Agri: Officer | 26.12.79 Direct | 18.06.2004 | 17 Sup. | |
| 10 | Sadiq Hussain Shah, APPO, Abbottabad (ops) | M.Sc Agri: Soil Science | 14.11.1952 Mansehra | 10.1.1977 Agri: Officer | 26.12.79 Direct | 18.06.2004 | 17 Sup. | |
| | Salahuddin, AHO, DIKhan. | M.Sc Agri: Entomology | 2.9.1950 DIKhan | 17.1.1977 Agri: Officer | 26.12.79 Direct | 18.06.2004 | 17 Sup. | |
| | Muhammad Aslam, AHO, (FATA) DIKhan. | M.Sc Hons Agri: | 3.6.1952 Bannu | 13.1.1977 Agri: Officer | 26.12.79 Direct | 18.06.2004 | 17 Sup. | |

Free
(9)

Attested

Muhammad J. High Tahsil
Advocate High Court
Office No 33 Adjacent to
Abbottabad

(33)

| | | | | | | | |
|----|--|----------------------------------|----------------------------|-----------------------------|--------------------|------------|------------|
| 13 | Said Mehmood, DOA, Bannu (ops) | M.Sc Hons Agri: Soil Science | 11.4.1950 Bannu. | 26.12.1979 Agri. Officer | 26.12.79 Direct | 16.02.2005 | 17 Sup. |
| 14 | Ishfaq Ahmad, DOA, Hangu | M.Sc Hons Agri: Soil Science | 12.2.1953 Kohat | 8.1.1977 Agri. Officer | 26.12.79 Direct | -do- | 17 Sup. |
| 15 | S. Riaz Ahmad Shah, DOA, Mansehra (ops) | M.Sc Hons Agri: Agronomy | 14.7.1952 Mansehra | 27.5.1974 Agri. Asstt. | 26.12.79 Direct | -do- | 17 Sup. |
| 16 | Siraj Muhammad, DOA (Information) Pesh. (ops) | M.Sc Hons Agri: Soil Science | 20.9.1953 Mardan | 17.1.1977 Agri. Officer | 26.12.79 Direct | -do- | 17 Sup. |
| 17 | Hazrat Muhammad, APPO, FATA, Peshawar. | B.Sc (Hons) Agri: | 12.4.1949 Bajour Agency | 1.6.1973 Agri. Assistant | 1.10.1976 | 27.2.2008 | |
| 18 | Gul Daraz, APPO, Bannu. | B.Sc. Hons Agri (Agronomy) | 9.2.1952 N.W. Agency | 5.8.1976 Agri. Assistant | 5.8.1976 | -do- | -do- |
| 19 | Maqsood Ahmad AHO, Peshawar. | M.Sc Hons: Agri Food Sciences | 21.4.1951 Mansehra | 17.1.1977 Agri. Officer | 5.8.1976 | -do- | -do- |
| 20 | Mir Qasim Shah, Asstt. Agronomist, Pesh | B.Sc Hons: Agri: Entomology) | 20.4.1949 Nowshera | 8.1.1977 Agri. Officer | 5.8.1976 | -do- | -do- |
| 21 | Qayum Jan, APPO, Peshawar. | M.Sc Hons: Agri: | 12.4.1953 Gharsadda | 3.1.1977 Agri. Officer | 5.8.1976 | -do- | -do- |
| 22 | Mrs. Talat Jabeen, Junior Instructor, ATI | M.Sc. Hons Agri: Chemistry | 25.3.1950 Peshawar | 26.12.1979 Agri. Officer | 5.8.1976 | 27.2.2008 | 17 Sup. |
| 23 | Muhammad Salim, APPO, Mardan. | M.Sc Hons Agri Agronomy | 1.9.1953 Mardan | 26.12.78 Agri. Officer | 5.8.1976 | -do- | -do- |
| 24 | Muhammad Sajawal, S.O (Agri.) Civil Sectt. | M.Sc Hons Agri: | 3.6.1953 Peshawar | 15.12.1981 Agri. Officer | 15.12.1981 | -do- | -do- |
| 25 | Iftikhar Hussain, APPO, Kohat. | M.Sc Hons Agri: Agronomy | 12.12.1951 Kohat | 15.12.1981 Agri. Officer | 15.12.1981 | -do- | -do- |
| 26 | Iqbal Hussain, DOA, Shangla (ops) | M.Sc Hons Agri: | 20.2.1957 Shangla | 23.8.1983 | 23.8.1983 | 9.5.2008 | -do- |
| 27 | Muhammad Iqbal DOA, Battagram: | M.Sc Hons Agri: | 2.2.1957 Abbottabad | 23.8.1983 | 23.8.1983 | -do- | -do- |

Promoted on 27/12/2008

Attes

Muhammad Aslam Khan Jatoi
Advocate High Court
Office No 33 Adjacent to

PTO

34

| | | | | | | | |
|----|---|---------------------|------------------------|-----------|-----------|----------|--------|
| 28 | Muhammad Nasim, APPO, Mansehra. | M.Sc Hons Agri: | 28.1.1961 Mansehra. | 23.8.1983 | 23.8.1983 | 9.5.2008 | 17 Sup |
| 29 | Inamullah, FADA, Miranshah. | M.Sc.Hons: Agri: | 15.12.1952 Bannu | 23.8.1983 | 23.8.1983 | -do- | -do- |
| | Zulfiqar Ahmad, AHO, Abbottabad (ops). | M.Sc Hons Agri: | 5.5.1958 Mansehra | 23.8.1983 | 23.8.1983 | -do- | -do- |
| 31 | Faseeh-ur-Rehman, EADA (E&M) FATA. | M.Sc Hons Agri: | 2.5.1958 Peshawar. | 23.8.1983 | 23.8.1983 | -do- | -do- |
| 32 | Muhammad Imran, DOA, Kohistan. | M.Sc Hons Agri: | 11.3.1955 Mansehra | 23.8.1983 | 23.8.1983 | -do- | -do- |
| 33 | Muhammad Ayaz, SMS, DIKhan. | M.Sc Hons: Agri: | 8.12.1952 DIKhan | 23.8.1983 | 23.8.1983 | -do- | -do- |
| 34 | Salim Shah AD (C&PR), Peshawar. | M.Sc Agri: | 20.9.1956 Peshawar. | 23.8.1983 | 23.8.1983 | -do- | -do- |
| 35 | Fazli Mabood, APO (FATA) Pesh. | M.Sc Hons-Agri: | 25.4.1960 Nowshera | 23.8.1983 | 23.8.1983 | -do- | -do- |

36. Hassan Taj
37. Dayash Bahader
38. Haisiyat Ullah
39. Muzaffer Khan.

ان افسران کی پروموشن بعد میں
صوبی آفس کے لئے اس لسٹ میں شامل
کئے گئے ہیں۔

DIRECTOR GENERAL
AGRICULTURE (EXTENSION)
NWFP, PESHAWAR

Muhammad
Advocate's High Court
Office No 33 Adjacent to
Distt 3rd Abbottabad

اس سب سے زیادہ لسٹ کے مطابق میرے بعد 23 افسرین کو Muzaffer Khan
جس کی پروموشن ملی اور سب کو ایک ہی پیریوڈ میں ملے اور ان میں سے سب
جو میرے آفسیئرز تھے وہ اب ریٹائرمنٹ آگے ہیں۔ تاہم میں نے صرف دو
افسران امتحان میں سہیل کر کے 25 اور حسیہ الہ آبادیہ کی 38 کی

Handwritten signature and initials.

... statements

GOVERNMENT OF NWFP
AGRIL: LIVESTOCK AND COOP: DEPTT:

Dated Peshawar, the June 18, 2004

NOTIFICATION.
NO.SOE(AD)V-8/2003/KC.

In pursuance of the recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Agricultural Officers (BS-17) to the post of Agricultural Officer (Supervisory) BS-17 with Special Pay of Rs. 150/-P.M. with immediate effect:-

| | |
|-----|--|
| 1. | Mr. Mehmood Khan, Agril: Officer, Mohmand Agency |
| 2. | Mr. Inayat-ur-Rehman, PHLC Swabi |
| 3. | Mr. Inamullah Khan, Lower Dir |
| 4. | Mr. Majeedullah, AO, Nizampur |
| 5. | Mr. Gul Muhammad, AHO O/O DOA Swat. |
| 6. | Mr. Muhammad Hanif, AHO O/O DOA, D.I. Khan |
| 7. | Mr. Ihsanullah, AO, O/O DOA, D.I. Khan. |
| 8. | Mr. Shafiq-ur-Rehman, DOA, Upper Dir |
| 9. | Mr. Fazli Rabbi, APPO, O/O DOA, Peshawar |
| 10. | Mr. Shadi Khan, AO O/O DOA, D.I. Khan |
| 11. | Mr. Nizam-ud-Din, DOA, Upper Dir, |
| 12. | Mr. Saadullah Khan, Instructor ATI Peshawar. |
| 13. | Mr. Fazli Rahim, ADA, Orakzai Agency. |
| 14. | Mr. Abbas Khan, EADA, South Waziristan Agency. |
| 15. | Mr. Amir Khan, AO, O/O DOA, Lakki. |
| 16. | Mr. Muhammad Younas, APPO, O/O DOA, Abbottabad. |
| 17. | Mr. Sharifullah Khan, DOA, Buner. |
| 18. | Mr. Abdur Rashid, APPO, Mardan. |
| 19. | Mr. Said Aman, DOA, Charsadda. |
| 20. | Mr. Ghulam Muhammad, AO, O/O DOA, Lakki. |
| 21. | Mr. Sadiq Hussain Shah, DOA, Abbottabad. |
| 22. | Mr. Sanaullah Zar, AO, O/O DOA, Swabi. |
| 23. | Mr. Salahud din, AO O/O DOA, Tank. |
| 24. | Mr. Muhammad Aslam, AO O/O DOA, Lakki. |

Sd-XXX
SECRETARY AGRICULTURE.

Endst. of even No. and date.

Copy forwarded for information and necessary action to:

1. The DG Agriculture (Extension) NWFP, Peshawar
2. The Accountant General, NWFP, Peshawar.
3. The Additional Accountant General (PR) Sub-Office, Peshawar.
4. The Principal, Agril: Training Institute, Peshawar.
5. The Director, Agriculture (Extension) FATA, NWFP, Peshawar.
6. The Project Director, PHLC Project, Swabi.
7. The EDO/DOA, Mansehra, Swabi, Lower Dir, Swat, D.I. Khan, Peshawar, Upper Dir, Lakki Marwat, Buner, Abbottabad Mardan, Charsadda Tank, Nowshera ..
8. The District Accounts Officers, Mansehra, Swabi, Lower Dir, Swat, D.I. Khan, Peshawar, Upper Dir, Lakki Marwat, Buner, Abbottabad Mardan, Charsadda Tank, Nowshera ..
9. The Agency Accounts Officer Mohmand Agency and SW Agency.
10. The EADA, Mohmand Agency and SW Agency.
11. Officers concerned.
12. PS to Secretary Agriculture.
13. PA to Dy: Secretary (Admn).

Notification-DP

Attached

Muhammad Ijaz Khan Tanki
Advocate High Court.
Office No. 33 Adjacent to
Distt 3cr Abbottabad

(AKHTAR ALI SHAH)
SECTION OFFICER-ESTT:

**MOST IMMEDIATE
COURT MATTER**

38

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

No. SO(Lit-II)FD/2-1259/2011
Dated: Pesh: the 16-02-2018

2018
17-2-18

To

The Secretary to Govt. of Khyber Pakhtunkhwa
Agriculture & Livestock and Cooperatives Department

Subject:-

EXECUTION PETITION NO. 128/2017 IN SERVICE APPEAL NO. 1633/2011 ISHTIAQ AHMAD, AGRICULTURAL OFFICER KOHAT, VS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH SECRETARY FINANCE & OTHERS.

Sir,

I am directed to refer to your department letter No. SOE(AD)17-358/2017 dated 17-11-2017 on the subject noted above and to advise that Administrative Department may consider the implementation of Judgment dated 23-01-2017 of Service Tribunal on its own level being Principal/Main respondent and in case of any ambiguity then the matter may be taken-up with Finance Department Accordingly.

Yours Faithfully,

SECTION OFFICER (LIT-II)

MC

Attached

Advocate High Court
Office No 33 Adjacent to
Distt. Bar Abbottabad

39



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the March 5, 2018

NOTIFICATION

NO.SOE(AD)/17-358/2017:- In pursuance of the judgment of the Khyber Pakhtunkhwa Service Tribunal dated 23.01.2017 in service appeal No.1633/2011 and Finance Department letter No.SO(Lit-II)FD/2-1259/2011 dard 16/02/2018, sanction is hereby accorded to the grant one advance increment on promotion from the post of Agriculture Officer (BS-17) to the post of Agriculture Officer (BS-17 Supervisory) with special pay of Rs.150/PM vide Notification No.SOE(AD)V-2/005/KC dated 16.02.2005 in respect of Mr.Ishtiaq Ahmad, Ex-District Officer Agriculture, Kohat for the purpose of pay and pensioner benefits with effect from 01.07.2005.

Sd/-
SECRETARY AGRICULTURE.

Endst of even No. & Date.

Copy forwarded for information and necessary action to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The DG, Agricultural Extension, Khyber Pakhtunkhwa, Peshawar w/r to his memo: No.21918 dated 18/123.2017 for information and further necessary action.
3. Ex-Officer concerned.
4. Personal file of the Officer.
5. PS to Secretary Agriculture.
6. Master file.

(Signature)
(MANZOOR AHMAD AFRIDI)
SECTION OFFICER-ESTT:

DIRECTOR GENERAL
AGRICULTURE (EXTENSION) KHYBER PAKHTUNKHWA PESHAWAR

Ends, No/Lit/ 5453-59/DG Dated Peshawar the 09/03 /2018.

Copy forwarded to:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
 2. Additional Accountant General (PR) Khyber Pakhtunkhwa Peshawar.
 3. Director Agriculture (Extension) FATA Peshawar.
 4. District Director Agriculture Kohat.
 5. District Account Officer Kohat.
 6. Superintendent Establishment HQ Office.
 7. Mr. Ishtiaq Ahmad Ex-Director Agriculture FATA.
- For information & necessary action.

(Signature)
SECRETARY AGRICULTURE
AGRICULTURE (EXTENSION) DEPARTMENT

ALTA
(Signature)
Advocate High Court
Office No 33 Adjacent to
Distt. Bar Abbottabad

(Signature)
ASSTT. ACCOUNTS OFFICER



| Sr. No | Date of order/ proceedings | Order or other proceedings with signature of Judge or Magistrate |
|--------|----------------------------|---|
| 1 | 2 | 3 |
| | 23.01.2017 | <p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u></p> <p align="center">Appeal No. 1633/2011</p> <p>Ishtiaq Ahmad Versus Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar and others.</p> <p align="center"><u>JUDGMENT</u></p> <p align="center"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Counsel for the appellant and Mr. Ziaullah, Government Pleader alongwith Zakiullah, Senior Auditor for respondents present.</p> <p>2. Ishtiaq Ahmad District Officer Agriculture Kohat hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for the grant of advance increments which was not allowed to him when promoted as Agriculture Officer (Supervisory) BPS-17 for which his departmental appeal/representation was finally regretted vide order dated 27.08.2011 communicated to the appellant on 07.09.2011 and hence the instant service appeal on 03.10.2011.</p> <p>3. Brief facts of the case of the appellant are that he was serving as Agriculture Officer BPS-17 when promoted as Agriculture Officer (Supervisory) BPS-17 with Special Pay of Rs. 150/- per month vide notification dated 16.02.2005. That the appellant was entitled to one advance increment in view of</p> |

ATTESTED

[Signature]
CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

[Signature]
Attested
Muhammad Ashraf Khan Talpur
Associate High Court
Office No. 33 Adjacent to
Court for Abbottabad

Khyber Pakhtunkhwa Civil Services Pay Revision Rules, 1978 amended on 29.04.1984 which was not allowed to the appellant as he was drawing his salary at the ceiling of BPS-17. That the appellant became entitled to the grant of promotion and increment on the strength of Finance Department notification dated 09.07.2005 but he was not granted the same while similarly placed junior officers, promoted lateron in the year 2008, were granted the said increment. That the matter was agitated before the competent authority including departmental appeal which was regretted on 27.08.2011 communicated to the appellant on 07.09.2011 and hence the instant service appeal on 03.10.2011.

Attested

[Signature]
 Advocate High Court
 Office No: 33 Adjacent to
 Distt Bar Abbottabad

4. Learned counsel for the appellant has argued that at the time of the said promotion of the appellant he was drawing maximum pay and was therefore not granted the said increment. That in view of notification dated July 09, 2005 Basic Pay Scales, Allowances and Pension were revised and civil servants drawing pay at the maximum were allowed annual increment in the shape of personal pay. That according to the said notification the said revision was effective from 1st July, 2005 but the appellant was not given benefit of the same and that it was in the year 2008, ^{to when} ~~that~~ similarly placed officers, junior in service to the appellant were promoted and they were granted the benefits of such promotions on the basis of the notification referred to above. That the appellant is entitled to similar treatment as extended to officers who were lateron promoted.

5. Learned Government Pleader has argued that at the time

ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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of promotion of the appellant the notification dated 09.07.2005 regarding revision of pay etc. was not existing ^{to and} as such the appellant was not entitled to the benefits of such a notification which was made later on.

6. We have heard arguments of learned counsel for the parties and perused the record.

7. It is not disputed before us that the appellant was promoted as Agriculture Officer (Supervisory) on 16.02.2005 while the notification dated 09.07.2005 was given effect from first July, 2005 i.e almost five months after the promotion of the appellant. It is also not disputed that junior colleagues of the appellant were promoted as Agriculture Officers (Supervisory) on 27.02.2008 and they were given benefits of the said notification dated 09.07.2005 and as a consequence thereof salaries of the junior officers were computed higher than the appellant. According to letter dated 18.09.1995 issued by the Secretary to Government of Khyber Pakhtunkhwa Finance Department senior and junior positions are to be determined with reference to the date of promotion or appointment to the higher pay scale/post in the same service group or cadre. It is further laid down that the pay of the senior officer shall not be less than pay of junior officer before the revision/re-fixation of pay except for the cases of personal increase of pay specifically granted to a government servant which shall not be treated as a cause of anomaly for others.

8. The increase in pay of junior officer referred to above is not an increase in pay specifically granted to the said

Attested

[Signature]
Advocate High Court
Office No 33 Adjacent to
Distt. Jail Peshawar

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

government servant and is in fact a routine increase on the basis of revision in pay rules vide notification dated 09.07.2005.

9. The admitted position before us which requires determination is that the appellant was promoted on 16.02.2005 and as per the rules then in vogue he was not entitled to increase in pay in the shape of one advance increment which became available to all civil servants w.e.f. 01.07.2005 on the strength of notification dated 09.07.2005. The respondents were thus obliged to have re-fixed the pay of the appellant by considering him entitled to the benefits attached to his promotion w.e.f. 01.07.2005. We therefore hold that the case of the appellant for the purpose of fixation of pay and attached benefits including pensionary benefits shall be considered w.e.f. 01.07.2005. We therefore hold that the case of the appellant for the purpose of fixation of pay and attached benefits including pensionary benefits shall be considered w.e.f. 01.07.2005 and as if the appellant was promoted as Agriculture Officer (Supervisory) BPS-17 on the said date for the purpose of pay and pensionary benefits. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Announced *Sd/- M. Azim Khan Afzidi,*
Chairman
 23.01.2017

Sd/- M. Amir Dazib,
Member

Date of Presentation of Application *29-12-16*
 Number of Words *2000*
 Copying Fee *2*
 Urgent *✓*
 Total *4*
 Name of Copyist *M. Arshad Khan*
 Date of Completion of Copy *29-12-16*
 Date of Delivery of Copy *29-12-16*

Certified to be true copy
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 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Arshad
 Munsif Arshad Khan Janjani
 District Judge High Court
 Office No 33 Adjacent to
 Distt. Jail Abbottabad

44

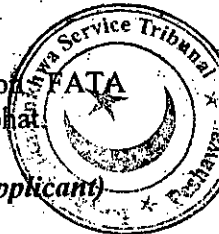
**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

In the matter of
Appeal No. 1633/2011
Decided on 23.01.2017.

Execution Petition No. 128/17

Ishtiaq Ahma, Ex- Director Agriculture Extension
Peshawar R/O House No. 3 Sector 6, Phase I KDA Kohat

(Applicant)



VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. Secretary Agriculture, Live Stock & Co-ordination Department Khyber Pakhtunkhwa Peshawar.

(Respondents)

Application for the implementation of the Judgment and Order dated 23.01.2017 of this Honourable Tribunal.

Respectfully Submitted:

1. That the above noted service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated 23.01.2017.
2. That, vide judgment and order dated 23.01.2017, this Honourable Tribunal while accepting the appeal of the appellant, held the appellant entitled for the fixation of his pay and pensionary benefits. The operating Para of the Judgment and order dated 21.02.2013, is reproduced below:

ATTESTED

Ishtiaq Ahma
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

".....we therefore hold that the case of the appellant for the purpose of fixation of pay and attached benefits including pensionary benefits shall be considered w.e.f 01.07.2005 and as if the appellant promoted as Agricultural Officer (supervisory) BPS-17 on the said date for the purpose of pay and pensionary benefits. The appeal is allowed in the above terms."

(Copy of the Judgment and order dated 23.01.2017, is attached as Annexure A)

3. That the judgment and order of this Honourable Tribunal, was duly communicated to the respondent by the applicant vide application dated 21.04.2017 for implementation. Since no response was given to

Attested

Muhammad Azeem Khattak
Advocate High Court
Office No. 33 Adjacent to
Peshawar

(45)

Execution Petition No. 128/2017
Ishtiaq Ahmad vs Govt



05.04.2018

Petitioner in person and Addl: AG alongwith Mr. Jalal uddin, SMS for respondents present. Representative of the respondents produced order dated 05.03.2018 whereby sanction was accorded for grant one advance increment on promotion from the post of Agriculture Officer (BPS-17) to the post of Agriculture Officer (BPS-17 Supervisory) with special pay of Rs. 150/PM vide notification no SOE(AD)V-2/2005/KC dated 16.02.2005 in respect of Mr. Ishtiaq Ahmad, Ex-District Officer Agriculture, Kohat for the purpose of pay and pensionary benefits with effect from 1.07.2005. The petitioner present during the hearing conceded that grievances raised through the present execution petition have been redressed and he did not want to press the present execution petition.

As the grievances of the petitioner have been redressed, hence, the execution petition stand implemented. File be consigned to the record room.

Announced
05.04.2018

Sd/- Ahmad Hassan,
Member

Certified to be true copy

Kohat
Peshawar

Date of Presentation of Application 12-4-18
Number of Words 800
Copying Fee 6-0
Urgent 2-0
Total 8-0
Name of Copyist [Signature]
Date of Completion of Copy 12-4-18
Date of Delivery of Copy 12-4-18

Attested

[Signature]
Advocate High Court
Office No 33 Adjacent to
Durrani

1996 S.C.M.P. No. 11

[Supreme Court of Pakistan]
Before Ajmal Mian, Salduzaman Siddiqui and
Mukhtar Ahmad Jaleel JJ

HAMEED AKHTAR NIAZI - Appellant

versus

THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF
PAKISTAN and others - Respondents

Civil Appeal No. 345 of 1987, decided on 24th April, 1996

(On appeal from the judgment dated 11.12.1986 of the Federal Service
Tribunal, Islamabad, passed in Appeal No. 124(L) of 1980)

Per Ajmal Mian, J.; Salduzaman Siddiqui, J. agreeing—

(a) Civil Servants Act (LXXI of 1973)—

S. 8(4) Constitution of Pakistan (1973); Art. 212(3) Establishment
Secretary S.D.O. Letter No. 2/4/75-AVI, dated 2.10.1975. Seniority - Merger
of four occupational groups of civil servants - Leave to appeal was granted to
consider the questions as to whether the seniority list of 1975 was properly
prepared in accordance with law and what was the effect of the reliance from the
Government side in the Supreme Court in another appeal on the list of 1976
whether when preparing the list of 1979 S. 8(4) of the Civil Servants Act, 1973
and other related provisions of law had been kept in view whether a civil
servant could be allowed to count his seniority in a post from a date earlier than
the one of his actual regular continuous officiation in that post, if he was the
fact that the respondents in appeal belonged to the different cadres of
Pakistan would make any difference, whether one uniform merit list for the
Group from different sources/cadres would have to be treated differently, if so
whether such treatment with or without the support of statutory provisions or
directions would not be in contravention of the relevant provisions of Civil
Servants Act, 1973 and in that context what was the effect of the provisions of
C.S.P. Cadre, whether the eligibility of civil servants for appointment to a
selection post conferred any right of seniority in that post and cadre without
issuance of a formal promotion/appointment in accordance with the
prescribed procedure and whether in that context a civil servant belonging to
G.S.P. Cadre was entitled to automatic promotion to the post of Secretary
Secretary after he had completed eight years of service but without the
requirement of being actually selected/promoted or appointed and whether

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Mukhtar

Mukhtar Ahmad Arshad Khan Baroli
Advocate High Court

Office No. 33 Adjacent to
District Court, Islamabad

effect of the Supreme Court judgment in Khizar Haider Malik and others v. Muhammad Rafiq Malik and another 1987 SCMR 78 on the case [p. 1193] A

(b) Civil Servants Act (LXXI of 1973)---

--- Ss. 8 & 23--- Seniority--- Merger of C.S.P and P.S.P cadres and creation of APUG--- Seniority of such an officer who was working in province elsewhere, could not be distorted/disturbed to his detriment on account of the merger of said groups and creation of APUG and junior of such civil servant could not be made senior to him nor a junior to his junior could be made senior to him but this has to be done within the framework of the rules of reorganization of services--- If the case of any civil servant does not fall within the ambit of said reorganization rules, S. 23 of the Civil Servants Act, 1973, can be pressed into service by the President of Pakistan to obliterate the inequity and unjust result arising out of the merger of the two cadres in respect of seniority of any of the civil servants. [p. 1193] B

ESTACODE, 1989 Edn., pp.1014, 1096 and 1097 ref.

(c) Service Tribunals Act (LXX of 1973)---

--- S. 4--- Constitution of Pakistan (1973), Art. 212--- Appeal to Service Tribunal or Supreme Court--- Effect--- If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum. [p. 1193] C

Per Mukhtar Ahmad Junejo, J.---

(d) Service Tribunals Act (LXX of 1973)---

--- S. 4--- Appeal to Service Tribunal: scope and extent. [p. 1194] D

M. Bilal, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellant.
Raja Muhammad Bashir, Deputy Attorney General and Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Dates of hearing: 7th and 8th April, 1996.

JUDGMENT

AJMAL MIAN, J.--- This is an appeal with the leave of this Court against the judgment dated 11.12.1986 passed by the Federal Service Tribunal.

Attested

Muhammad Ejaz Khan Tanzeel
Advocate High Court
Office No. 33 Adjacent to
Distt. Cor. Abbottabad

Islamabad, hereinafter referred to as the Tribunal, passed in Appeal No. 124(D) of 1980, filed by the appellant, praying for the following reliefs:-

16. In view of the above, the appellant (who was eventually promoted with effect from 28-8-1980) humbly prays that this Honourable Tribunal may kindly direct the respondent No. 1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.S.B. according to his seniority. Cost may also graciously be allowed.

dismissing the same for the reasons recorded in Appeal No. 116(R) of 1981, filed by one M. Ramizul Haq:-

2. Leave to appeal was granted to consider inter alia the following questions:-

- (a) Whether the seniority list of 1979 was properly prepared in accordance with law and what is the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976?
- (b) Whether when preparing the list of 1979, section 8(d) of the Civil Servants Act, 1973 and other related provisions of law have been kept in view?
- (c) Whether a civil servant can be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post, if not, whether the fact that the respondents belonged to the defunct Civil Service of Pakistan will make any difference?
- (d) Whether one uniform principle of seniority will apply to all members of the Secretariat Group or the officers joining the Group from different source/cadres would have to be treated differently, if so, whether such treatment whether with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of the Civil Servants Act, 1973 and in this context what is the effect of the abolition of the C.S.P. Cadre, and
- (e) Whether the eligibility of a civil servant for appointment to a selection post confers any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in this context, a civil servant belonging to ex-C.S.P. cadre is entitled to automatic promotion to the post of Deputy Secretary after he completes eight years of service.

Attested

Muhammad Asif Iqbal Jatoi
Advocate High Court
Office No. 33 Adjacent to
Dist. Jail Islamabad



without the aforementioned requirement of being actually selected, promoted or appointed? and

(f) What is the effect on this case of the judgment of this Court in *Khan Haider Malik and others v. Muhammad Rafiq Malik and another*, 1978 SCMR 78?

3. It may be observed that the order of granting leave was recalled on 10-2-1992 but upon review the same was set aside through an order dated 14-2-1994 and thereby the aforesaid leave granting order was restored.

4. The brief facts are that the appellant joined Pakistan Military Lands and Cantonments Service on the basis of the results of competitive examination held in June, 1960. It is the case of the appellant that in 1967 he proceeded to U.S.A. on study leave and obtained a Master's Degree in Public Administration from the Maxwell School of Public Affairs and Citizenship, Syracuse University. It is also his case that in June/July, 1972, the Planning Division recommended him for promotion to the post of Deputy Secretary to the Government of Pakistan. It is his further case that pending approval of the Establishment Division, Planning Division promoted him as Deputy Secretary by an order dated 9-8-1972. The above order reads as follows:

OFFICE ORDER

It has been decided that Mr. Hameed Akhtar Niaz, PML & CS will look after the work of Deputy Secretary (Administration) with immediate effect. He will be designated as Officer on Special Duty (Administration).

Mr. Zafar Iqbal is posted as Deputy Secretary, Programming.

It has also been averred by the appellant that he was promoted as Deputy Secretary on regular basis on 9-4-1973 and posted in the Establishment Division.

5. It seems that in August, 1973, C.S.P. and P.S.P. cadres were merged into All Pakistan Unified Grades, hereinafter referred to as APUG. It further seems that after the aforesaid merger, four occupational groups were created namely, Tribal Areas Group, District Management Group, Secretariat Group and Police Group. The appellant opted for the Secretariat Group. It is the case of the appellant that the Gradation List of Deputy Secretaries i.e. of the Secretariat Group was prepared in accordance with the provision of section 8(A) of the Civil Servants Act, 1973, hereinafter referred to as the Act, which provides that "Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post." According to the appellant, the above Gradation List was circulated in June, 1976, wherein the appellant's name appeared at Serial No. 69. However, the appellant claims in August, 1979, that civil servants belonging to erstwhile C.O.P. Service of

Attested

Muhammad Akhtar Niaz
Advocate High Court
Office No. 33 Adjacent to



Pakistan (C.S.P.), whose names appeared much below the appellant in the aforesaid Gradation Lists of 1976, were being promoted to the rank of Joint Secretary (Grade-20) and his name had not been put up for promotion to the General Selection Board for consideration. He first made efforts to get redress from the department, but eventually he filed the aforementioned service appeal in the Tribunal, which was dismissed as stated above. After that he filed a petition for leave to appeal in this Court, which was granted to consider the above questions.

6. It may be pertinent to observe that in the above appeal, besides the Federation, 14 civil servants were arrayed as respondents. It may further be observed that, in addition to the above respondents, 7 other civil servants were implied pursuant to an application dated 4-1-1988. Dr. Sh. Alican Mehmood was implied as a respondent (respondent No. 23 in the present appeal) on his own application, whereas the applications of Muhammad Aslam and Tariq Junjo for being implied, remained pending till today. However, they were heard. One, Malik Zahoor Akhtar, has also appeared though he had not filed any application for getting himself implied in the aforesaid appeal.

7. Be that as it may, in support of the above appeal, Mr. M. Bilal, learned Sr. A.S.C. for the appellant, has vehemently contended that after the merger of the two cadres, namely, C.S.P. and P.S.P. and creation of APUG, the Gradation List of the Deputy Secretaries prepared in 1976 could not have been disturbed and that certain civil servants could not have been given seniority over the appellant from a date prior to their regular appointments as the Deputy Secretaries in the above cadre. To reinforce the above submission, reliance has been placed by him inter alia on section 8(4) of the Act and para 8 of ESTACODE, 1989 Edition, under the caption 'Secretariat Group' at Serial No. 19, incorporated on the authority of O.M.No.2/2/75/ACR, dated 12-4-1976.

The aforementioned newly added respondent supports Mr. Bilal's contention.

On the other hand, Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, has contended that seniority inter se of the civil servants belonging to C.S.P. cadre obtaining prior to its merger could not have been distorted to the detriment of any of the above civil servants and therefore, if C.S.P. officers, who were not actually posted as Deputy Secretaries but were deputed to various Provinces on account of public exigencies, could not have been made junior to civil servants who were junior to them prior to the merger of aforesaid two cadres and who were working as Deputy Secretaries and were senior inter alia to the appellant.

8. It appears that the Tribunal proceeded on the premises that certain

Attested
Muhammad Ali Akhtar Khan
Advocate High Court
Office No 33 Adjacent to
Distt 3cr Abbottabad

learned Deputy Attorney General. It may be advantageous to reproduce relevant portion of the impugned judgment, which reads as follows:

It appears that the question of seniority was not examined in persons not being Members of the Service were appointed to posts with the approval of the President vide Notification No. 149/1973 dated 14-9-1973. Nevertheless, the seniority lists were prepared for Deputy Secretaries and Joint Secretaries, etc. and the seniority of those officers of the former C.S.P. who at the relevant time were serving against these posts. At that time, the Rule for appointment of the Deputy Secretaries was that a C.S.P. Officer who had completed 12 years' service could be appointed as Deputy Secretary. No doubt, subsequently by Office Memo No. 37774-AR-II dated 20th May, 1974, 12 years period was provided for Grade-19 and for horizontal movement of Grade-18 Officers to the post of Deputy Secretary vide para. 3 of Office Memo No. 22275-AR dated 21-2-1975, but this deviation in the length of service is immaterial as far as C.S.P. Officers are concerned. Their names already entered as Members of C.S.P. and subsequently of APUG. Their seniority was to be changed in accordance with some principle and not by making any rule affecting their vested right. All Rules made under the Civil Servants Act or the Civil Servants Ordinance have to be construed with prospective operation and not with retrospective operation. All those Rules which affect the former Officers of the C.S.P. have to be applied for the situations existing after the enactment of the Civil Servants Ordinance, 1973, and the Rules made thereunder. The seniority of the C.S.P. Officers in APUG could not therefore be distorted. Any seniority to which a Member of the Cadre was entitled before the constitution of Secretariat Group, could not be affected by the provisions of section 8(4) of the Civil Servants Act, 1973. In other words, the seniority of such a person cannot be destroyed by any subsequent change in the principles of seniority. By making a provision in the relevant Officer Memorandum that seniority shall count from the date when an officer becomes Deputy Secretary or is promoted to Grade-19, whichever is earlier, the distortion in the seniority of other Federal Services was removed, but in case of C.S.P. Officers this formula could not work as there was no scale comparable to Grade-19 (Junior Administrative Grade) and the C.S.P. Officers used to be promoted to the Joint Secretary's grade from Senior C.S.P. Scale which is comparable with Grade-18, and the post of Deputy Secretary was never a promotion post in the cadre. Thus, in our opinion, if after the coming into force of the Civil Servants Act, an officer of former C.S.P. who was senior to his colleagues working as Deputy Secretary in the Secretariat, but an officer who was working in the Province or elsewhere would, when brought to the Secretariat later, retain his

Attested

Advocate High Court
Office No. 33 Adjacent to
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seniority vis-à-vis his own colleagues. In other words, if any officer of the former C.S.P. is appointed as Deputy Secretary in the Secretariat Sub-Group within APUG, he would count his seniority from the date he completes 8 years of service. If any of his colleagues junior to him had already been promoted, it is this principle which the Establishment Division has applied and we think that this is a proper course by which the distortion in the seniority can be removed.

9. In this regard, it may be pertinent to refer to page 1014 of the ESTACODE, 1989 Edition, in which under the caption "Reorganisation of APUG in to four Occupational Groups Seniority of members of the Group" at Serial No.17 has provided as under on the basis of Establishment Secretary's D.O. Letter No.2/4/75-AVI dated 2-10-1975:

"Sl. No.17:

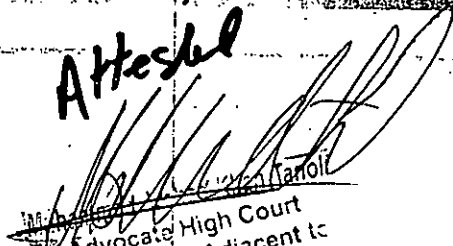
Kindly refer to Establishment Secretary's Circular D.O. Nos.5/1/73-ARC, dated the 7th September, 1973, 2/2/73-AVI, dated the 26th November, 1973, and 2/1/74-AVI, dated the 29th May, 1974, alongwith which the combined seniority lists of officers of All-Pakistan Unified Grades in various grades were circulated.

2. In the meantime, the All-Pakistan Unified Grades has been organised into four Occupational Groups—the Secretariat Group, the District Management Group, the Police Group, and the Tribal Areas Group. The rules and procedures etc. governing the administration of each of these Groups have already been issued and sent to you vide the Establishment Division's Office Memoranda No.2/2/75-ARC, dated 21st February, 1975 (Secretariat Group), No.2/2/74-ARC, dated 23rd February, 1974 (District Management Group), No.3/2/75-ARC, dated 31st May, 1975 (Police Group) and D.O. No.1/6/78-ARC, dated 20th October, 1973 (Tribal Areas Group). Consequently, the seniority lists have now been drawn up separately in respect of each Group.

3. As already indicated, each group will henceforth be managed under the respective rules quoted above. A member of a particular Group will be governed by prospects of promotion and advancement available within the Group. While entry into other Groups by horizontal movement is possible with the approval of Central Selection Board, there will be no automatic mobility from one Group to the other. In other words, officers shown in any particular Group will now belong to that Group once for all unless specifically selected and approved for movement to another Group.

4. You may now kindly inform the officers under your administrative control accordingly. Officers shown in the Secretariat Group and belonging originally to some other Group may let this Division know finally as to whether they would like to remain in the Secretariat Group.

Attested


Advocate High Court
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or go back to their parent Group. Option once exercised, such option should reach us not later than 31st October 1975. Officers to exercise option by that date will be presumed to be an option to the Group where the name appears presently.

5. In the meantime, these lists may be treated as provisional and if there are any omissions or discrepancies, these may be communicated to us immediately for rectification.

10. Reference may also be made to paras. 3 and 8 of the ESTACODE 1989 Edition, at pages 1096 and 1097 thereof under the caption "Secretariat Group" at Serial No. 19 and which read as under:-

Para. 3 of the ESTACODE: 3. Deputy Secretary - Appointment to the post of Deputy Secretary will be made in accordance with the following methods:-

- (i) By promotion of Grade-18 Officers of Office Management Group and the Secretariat Group on the recommendations of the Central Selection Board.
- (ii) By horizontal movement from other Occupational Groups of Grade-19 Officers who have been recommended by the Ministries/Divisions/Departments or Provincial Governments and have been found fit by the Central Selection Board.
- (iii) By direct appointment on the recommendations of the Federal Public Service Commission of persons possessing such qualifications and experience etc. as may be prescribed.

Para. 8 of the ESTACODE: 8. Deputy Secretary - Seniority would be determined from the date of continuous regular officiation as Deputy Secretary, or in a post in Grade-19, whichever is earlier.

11. We may observe that in the present case, section 8(4) of the Act is relevant as it will be covered by the rules framed for regulating APUG. It is evident from afore-quoted para. 4 of ESTACODE 1989 Edition, at page 1014 that after the creation of Secretariat Group, the civil servants were given the option to opt the above Group or any other Group by 31-10-1975. Whereas above quoted para. 3 of the ESTACODE at page 1096, under the caption "Secretariat Group" at Serial No. 19, indicates as to how the appointment to the post of Deputy Secretary will be made i.e. by promotion of Grade-18 Officers by horizontal movement and by direct appointment on the recommendation of the Federal Public Service Commission.

12. It may further be noticed that para. 8 of the above ESTACODE at page 1097 provides that seniority would be determined from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

Attested

[Signature]

Advocate High Court
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13. The Tribunal has not taken into consideration that above mentioned provisions of the ESTACODE while dealing with the controversy, it should have decided whether the respondents had exercised the option in terms of aforesaid para 4 of the above ESTACODE at page 1014, on 31/10/73 and whether the seniority list was prepared as per aforesaid para 4 of the ESTACODE, i.e. from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

14. There is no doubt that the seniority of an officer, who is working in a Province or elsewhere, cannot be distorted/disturbed to his detriment on account of the merger of above two cadres of C.S.P. and P.S.P. and creation of APUG. His junior cannot be made senior to him nor a junior to his junior can be made senior to him. But, this is to be done within the framework of the rules of reorganisation as given in the above ESTACODE. If the case of any civil servant does not fall within the ambit of the above rules, section 23 of the Act can be pressed into service by the President to obliterate the inequitable and unjust result arising out of the above reorganisation in respect of seniority of any of the civil servants.

15. It was also contended by Mr. Raja Muhammad Bashir, learned Deputy Attorney General, that since that appellant has already been promoted to Grade-20, the above appeal has become infructuous. However, this contention was refuted by Mr. Bilal and it was urged by him that the appellant is entitled to get his seniority restored according to the rules.

16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

17. The above appeal stands disposed of in the above terms with no order as to costs.

(Sd)
Ajmal Mian
(Sd)
Saiduzzaman Siddiqui

MUKHATAR AHMAD JUNEJO, J. - My learned brother Ajmal Mian J. was kind enough to send me draft of the judgment proposed to be delivered by

SCMR

Attested

[Signature]

Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad

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consolidation proceedings had not been drawn finally and remained inconclusive. For this reason, reconsolidation operations took place in the same revenue estate subsequently. I also agree with the appellants that if there had been any complaint, the same could have been attended to by the appellant if appeals were filed before him at the time he was working as Consolidation Officer. Instead of appeals, complaints were made against the affected persons and because of these complaints, proceedings were started against the appellant and others. I also agree with the learned counsel for the appellants that proceedings under E&D Rules, 1999 were not properly conducted as the ADO(G) could not act as authorized officer under the said rules because the scheme of authorized officers did not exist in rules of 1999. The fact is proved, after examination of contentions of the appellant as well as those of respondents that no mischief was actually caused by the appellant and no ulterior motives could be attributed to the appellant at the same time if any mistakes were made, the appellant had not been vigilant in the performance of his duties as Consolidation Officer. No doubt, appellant was not involved in any mischief and his past service record also showed that he could not be expected to involve himself in any malpractices but at the same time it remains that he showed some slackness in his supervisory functions. Apparently, his subordinate staff took advantage of the slackness, but on the basis of such slackness, appellant could not have been awarded a major penalty. Therefore, considering all relevant aspects of the case, a minor penalty of censure is considered sufficient on account of some inefficiency on the part of the appellant. Appeal is therefore, accepted to the extent. Resultantly, impugned orders shall stand modified as the penalty of dismissal from service shall be converted into that of censure. Appellant shall stand reinstated and the period intervening shall be treated as leave of the kind due.

H.B.T./MS/PST

Order accordingly

2005 P.L.C.(C.S.) 368

[Supreme Court of Pakistan]

Present: Nazim Hussain Siddiqui, C.J., Javed Iqbal
and Abdul Hamzed Dogar, JJ

TARACHAND and others

versus

KARACHI WATER AND SEWERAGE
BOARD, KARACHI and others

Civil Review Petition No. 259 of 2002, Civil Miscellaneous Applications Nos. 874 and 875 of 2001 in Civil Appeal No. 1235 of 2000, decided on 14th December, 2004.

(On review against the judgment of this Court, dated 14-5-2002 rendered in Civil Appeal No. 1235 of 2000).

Constitution of Pakistan (1973)---

Arts. 185, 188 & 25--Supreme Court Rules 1980, O XXXIII, R. 5--
Civil Procedure Code (V. of 1908), O XLI, R. 33--Review petition--
Civil service--Contentions of the petitioner were that neither notice
nor grant of leave to appeal by the Supreme Court nor that of ex parte
order by the Supreme Court was served upon him; that he was one of the
petitioners who impugned the departmental orders of retrenchment and
termination before the High Court, which were set aside in appeal by the
Supreme Court, that the moment he came to know about the decision of
the Supreme Court, he had approached the Court and filed Civil Review
petition well within time and that though he was a non-appealing party in
the appeals, yet he was entitled to the same relief on the basis of
the principle of equality--Validity--Held, since the services of all such
persons were dispensed with by single order, as such, there was no
distinction between their case and that of the appellants and was identical
in all fours--When Tribunal or Court decides a point of law relating to
the terms of service of a civil servant which covered not only the case of
civil servants who litigated, but also of other civil servants who might
not have taken any legal proceedings, the dictates of justice and rule of
good governance demand that the benefit of the decision be extended to
other civil servants, who might not be parties to the litigation instead of
compelling them to approach the Tribunal or any other legal forum--
Article 25 of the Constitution was also explicit on the point that all
citizens were equal before law and were entitled to equal protection of
law. [pp. 373, 375, 376] A, C, D & E

Hameed Akhtar Niazi v. The Secretary, Establishment Division,
Government of Pakistan and others 1996 SCMR 1185; Abdul Hameed
Masir and others v. National Bank of Pakistan and others 2003 SCMR
1030; Hakim Muhammad Nabi Khan and 2 others v. Warasatullah
through Legal Representatives 1987 SCMR 1698; Province of Punjab
through Collector Bahawalpur, District Bahawalpur and others v. Col.
Abdul Majeed and others 1997 SCMR 1692 ref.

(b) Judgment in personam--

Definition--

A judgment determining the rights of persons inter se in or to
any money or property in dispute, but not affecting the status of persons
or things or determining any interest in property except between the
parties. They include all judgment for money.

Arshad

Arshad Khan Tanoli
Associate High Court
No. 33 Adjacent to
Tribunal Bahawalpur

Normally a judgment binds only those who are parties to it. Such judgments are known as judgments in personam.

Judgments in personam or inter parties are those which determine the rights of parties inter se to or in the subject-matter of dispute, whether it be corporeal property of any kind whatever, liquidated or unliquidated demand, but do not affect the status of persons or things, or make any disposition of property or declare or determine any interest in it except as between the parties litigant. They include all judgments which are not judgments in rem.

A judgment in personam determines the rights of the parties inter se to or in the subject-matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property, or declare or determine any interest in it except as between the parties litigant. Judgments in personam include judgments which are not judgments in rem, but as many judgments in the latter class deal with the status of persons and not of things, the description "Judgment inter parties" is preferable to "Judgment in personam".

A judgment against a particular person, as distinguished from a judgment against a thing or a right or status. [p. 373] B

The Oxford Companion to Law by Dawid M. Walker; K.J. Ayer's Judicial Dictionary (10th Edn. 1988); Words and Phrases, legally defined (Vol: 3 I-N) and Black's Law Dictionary with pronunciation (6th Edn.) ref.

(c) Judgment in rem—

Definition.

A legal determination binding not only the parties, but also persons. It applies particularly to judgments in Admiralty, declaring the status of a ship, matrimonial causes, grants of probate and administration and condemnation of goods by a competent Court.

A judgment which gives to the successful party possession or a declaration of some definite right which right is available against the whole world.

A judgment in rem may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing (as distinct from the particular interest in it of a party to the litigation). Apart from the application of the term to persons, it must affect the res in the way of condemnation, forfeiture, declaration of status or title, or order for sale or transfer.

An adjudication pronounced upon the status of some particular person or subject-matter, by a Tribunal, having competent authority is a judgment in rem. It is founded on a proceeding instituted against or on behalf of a person or thing or subject-matter whose status or condition is to be ascertained or one brought to enforce a right in the thing itself. It operates upon the property. It is a solemn declaration of the status of a person or thing. It is binding upon all persons insofar as their interests in the property are concerned. [p. 373] B

The Oxford Companion to Law by Dawid M. Walker; K.J. Ayer's Judicial Dictionary (10th Edition 1988); Words and Phrases, legally defined (Vol: 3 I-N) and Black's Law Dictionary with pronunciations (6th Edition) quoted:

Syed Ifkhar Hussain Gillani, Senior Advocate Supreme Court Petitioner (in Civil Review Petition No.259 of 2002).

Ibrar Hussain, Advocate Supreme Court for Respondents (in Civil Review Petition No.259 of 2002).

M. Bilal, Senior Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for Applicants (in Civil Miscellaneous Applications Nos.874 and 875 of 2001).

Ibrar Hussain, Advocate Supreme Court for Respondents Nos.1-3 (in Civil Miscellaneous Applications Nos.874 and 875 of 2001).

Raja Abdul Ghafoor, Advocate-on-Record for Respondents Nos.4-5 (in Civil Miscellaneous Applications Nos.874 and 875 of 2001).

Date of hearing: 14th December, 2004.

ORDER

ABDUL HAMEED DOGAR, J.—The background leading to the filing of the above mentioned matters are that about 130 employees of Karachi Water and Sewerage Board including petitioner Tara Chand (in Civil Review Petition No.259 of 2002) and applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher (In Civil Miscellaneous Applications Nos.874 and 875 of 2001) challenged the orders, dated 11-7-1998, 18-7-1998 and 20-7-1998 passed by Vice Chairman about retrenchment and termination of their services through Constitution Petition No.D-1151 of 1998 before the learned High Court of Sindh at Karachi. The said petition was dismissed vide judgment, dated 4-6-1999 by the learned Division Bench of High Court of Sindh, Karachi. The said judgment was challenged in Civil Petition Nos.352-K, 396-K and 464-K of 1999 in which leave to appeal was granted and the appeals were numbered as Civil Appeals Nos.1232 to 1235 of 2000. In the aforesaid appeals, petitioner Tara Chand and

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applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher were arrayed as respondents. After the notices were issued to them but were not served upon them and an ex parte order was passed by the Assistant Registrar (Civil) against them on 13-3-2001. However, above appeals were allowed by this Court vide judgment, dated 14-5-2002 and orders, dated 11-7-1998, 18-7-1998 and 20-7-1998 passed by the Chairman of the Board were set aside and were declared without authority. All the appellants therein were reinstated in service.

2. On coming to know about the above decision, petitioner Tara Chand along with Javed Hussain, Muhammad Shah, Kanwar Muhammad Hanif Shaikh, Abdul Shakoor, Mujahid Hanif and Muhammad Iqbal Palejo filed Review Petition No. 259 of 2001 on 11-6-2002 wherein they urged that in fact they were respondents in the aforesaid Civil appeals but were not served, as such, ex parte order passed against them in their absence be set aside and they may be allowed the same relief as granted to appellants.

3. However, the aforesaid Civil Review Petition was returned by Assistant Registrar (Civil) on 13-3-2001 to the Advocate-on-Record with the objection that the same was not entertainable under Order XXV, rule 6 of Supreme Court Rules, 1980 as the counsel who had drawn the review petition did not appear and argue the case in the above mentioned appeals. The said order was challenged through Civil Miscellaneous Appeal No. 42 of 2003 under Order V, rule 33 of Supreme Court Rules, 1980 which was allowed only to the extent of petitioner Tara Chand were as against others, it was dismissed for non-prosecution by learned Judge in Chambers vide order dated 20-11-2003. Petitioner Tara Chand filed amended review petition whereas applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher moved Civil Miscellaneous Application No. 874 of 2001 and set aside the order dated 13-3-2001 as Civil Miscellaneous Application No. 875 of 2001 for transposition from the side of respondents to the side of appellants.

4. We have heard Messrs Syed Iftikhar Hussain Gillani, learned Senior Advocate, Supreme Court for petitioner, M. Bilal, Senior Advocate Supreme Court for applicants and Messrs Ibrar Hussain and Raja Abdul Qhafoor, learned Advocates Supreme Court for the respondents and have gone through the record and proceedings in minute particulars.

5. Syed Iftikhar Hussain Gillani, learned Advocate Supreme Court contended that in fact petitioner Tara Chand was arrayed as respondent No. 47 in Civil Appeal No. 1235 of 2000. According to him, neither

about grant of leave to appeal nor that of ex parte order, dated 13-3-2001 was served upon him. Admittedly, he was one of the appellants who impugned the departmental orders of retrenchment and termination before the learned High Court of Sindh, which were set aside by this Court. The moment he came to know about the decision, he approached this Court and filed above mentioned civil review petition well within time. Though he is a non-appealing party in the aforesaid appeals, yet is entitled to the same relief on the basis of principle of rule of equality. In support, he relied upon the case of *Imdad Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others* 1996 SCLR 1185.

6. Mr. M. Bilal, learned Senior Advocate Supreme Court on behalf of applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher contended that the applicants were also the appellants before the learned High Court of Sindh and had challenged the departmental orders passed against them. They were also arrayed as respondents Nos. 50, 58, 92 and 104 in Civil Appeal No. 1235 of 2000 before this Court which was allowed. Their matter is identical on all respects with those appellants, therefore, deserves the same relief.

7. On the other hand, Messrs Ibrar Hussain and Raja Abdul Qhafoor, learned Advocate Supreme Court, vehemently opposed the above contentions and argued that the judgment of this Court passed in the aforesaid civil appeals was in fact judgment in personam and not in rem, as such, the petitioner and applicants are not entitled to any relief. According to them, this being a service matter, they should have approached the Service Tribunal for redressal of their grievance which jurisdiction was not invoked by them.

8. Admittedly, petitioner Tara Chand and applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadullah Saher had challenged the orders, dated 11-7-1998, 18-7-1998 and 20-7-1998 of their retrenchment and termination along with other appellants in writ petition before learned High Court of Sindh. It is also an admitted fact that petitioner and applicants were arrayed as respondents in Civil Appeal No. 1235 of 2000 before this Court wherein the above said order of learned High Court was challenged. Since the services of all of them were dispensed with by single order, as such, there is no distinction in between their case and that of appellants and is identical on all fours.

9. As to whether impugned judgment is judgment in personam or judgment in rem, it would be appropriate to reproduce their definitions as defined in various dictionaries:

(1) The Oxford Companion to Law by David M. Walker

Judgment in personam --- A judgment determining the rights of

Attended

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No. 33 Adjacent to
DSC

persons inter se in or to any money or property in dispute, not affecting the status of persons or things or determining interest in property except between the parties. They include judgments for money.

Rem, Judgment in.--- A legal determination binding not only the parties but all persons. It applies particularly to judgments in Admiralty, declaring the status of a ship, matrimonial causes, grants of probate and administration and condemnation of goods by a competent Court.

(II) K.J. Aiyar's Judicial Dictionary (10th Edition 1988)

Normally, a judgment binds only those who are parties to it. Such judgments are known as judgments in personam.

Rem, Judgment in.--- A judgment which gives to the successful party possession or declaration of some definite right, which right is available against the whole world.

(III) Words and Phrases legally defined (Vol. 3 I-N)

Judgment, In personam.---A judgment in personam or inter parties are those which determine the rights of parties inter se or in the subject-matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but do not affect the status of either persons or things or make any disposition of property or declare or determine any interest in it except as between the parties litigant. They include all judgments which are not judgments in rem.

A judgment in personam determines the rights of the parties inter se to or in the subject-matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property or declare or determine any interest in it except as between the parties litigant. Judgments in personam include all judgments which are not judgments in rem, but as many judgments in the latter class deal with the status of persons and not of things, the description "Judgment inter parties" is preferable to "Judgment in personam".

Judgment, In Rem.--- A judgment in rem may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing (as distinct from the particular interest in it of a party to the litigation). Apart from the application of the term to persons, it

must affect the res in the way of condemnation, forfeiture, declaration of status or title, or order for sale or transfer.

(V) Black's Law Dictionary with pronunciations (6th Edition)

Judgment in personam or inter parties. A judgment against a particular person, as distinguished from a judgment against a thing or a right or status.

Judgment in rem. An adjudication pronounced upon the status of some particular thing or subject-matter, by a Tribunal, having competent authority. *Booth v. Copley*, 238 Ky. 23, 140 S.W. 2d, 62, 666. It is founded on a proceeding instituted against or on something or subject-matter whose status or condition is to be determined. *Eureka Building and Loan Ass'n v. Shultz*, 139 Kan. 435, 32 P.2d 477, 480; or one brought to enforce a right in the thing itself. *Federal Land Bank of Omaha v. Jafferson*, 229 Iowa 1054, 295 N.W. 855, 857. It operates upon the property. *Guild v. Wallis*, 150 Or. 69, 40 P.2d 737, 742. It is a solemn declaration for the status of some person or thing. *Jones v. Teat*, Tex. Civ. Appellant., 57 S.W. 2d. 617, 620. It is binding upon all persons in so far as their interests in the property are concerned.

10. To further elaborate the above aspect, it would be relevant to refer the case of *Hameed Akhtar Niazi (supra)* wherein this Court has held that when Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the Civil servants who litigated, but also of other civil servants, who may have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. This Court in the case of *Khawaja Abdul Hameed Nasir and others v. National Bank of Pakistan and others* 2003 SCMR 1030 also extended the benefit to all the persons falling within the same category in order to do complete justice. To further fortify, reference is made to the case of *Hakim Muhammad Nabi Khan and 2 others v. Warasatullah through Legal Representatives* 1987 SCMR 1698, wherein this Court had allowed benefit of relief to non-appearing party of doing complete justice. Irrespective of above, this Court in the case of *Province of Punjab through Collector Bahawalpur, District, Bahawalpur and others v. Col. Abdul Majeed and others* 1997 SCMR 1692, while discussing the provisions of Order XLI, rule 33, C.P.C. and Order XXXIII, rule 5 of the Supreme Court Rules, 1980, has held at page 1709 as under:--

"Not only this it is now well-settled that under Order XLI.

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rule 33, C.P.C., that the High Court and under Order rule 5 of the Supreme Court Rules this Court, can exercise appellate powers in favour of all or any of the respondent parties although such respondents or parties may not have any appeal or objection.

11. Irrespective of above case laws, our Constitutional provisions are also explicit. According to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973; all citizens are equal before law and entitled to equal protection of law.

12. The result, therefore, is that for the reasons stated above, we find force in the contentions of learned counsel for petitioner applicants and allow Civil Review Petition No.259 of 2002 and Miscellaneous Applications Nos. 874 and 875 of 2001. According to petitioner Tara Chand and applicants, namely, Muhammad Haneef, Bashir Ahmad, Muhammad Dawood and Asadulah Saher are also extended the same relief which has been allowed by this Court on 14-5-2002 in Civil Appeal No.1235 of 2000.

M.B.A/T-11/S

Order accordingly

2005 P.L.C.(C.S.) 376

[Federal Service Tribunal]

Before Qazi Muhammad Hussain Siddiqui and Rashid Ali Mirza, Members;

IMTIAZ AHMED

versus

CENTRAL BOARD OF REVENUE and others

Appeal No.368(K)(CS) of 2003, decided on 20th September, 2004

(a) Civil service--

Adverse remarks in a training period for less than three months. Competency. Equation of training report with ACR. Training report could neither be equated with ACR nor could it be a part of ACR for the reasons that it was not to be countersigned by any Authority higher than the Reporting Officer, that such a report was not to be used for quantification, that it could be used for consideration of promotion of officer concerned i.e. it was discretion of Promotion Committee/Director to consider such a report or not; that training report unlike ACR, was not by any superior officer of the department of trainee officer and that

PLC (Service)

training report had no concern with the integrity, quality, quantity and output of work done by an officer during his official business. Training report was more of report about the performance of an officer while in training rather than a report on conduct of such officer; it could not be said that adverse remarks in a training period for less than three months by a Reporting Officer, would be competent or incompetent. [383, 384] A & B

1985 PLC (C.S.) 432 and 1996 PLC (C.S.) 635; ref.

(c) Civil service--

Adverse remarks--Delay in recording and communicating adverse remarks--Effect--Delay in recording and communicating adverse remarks, could not, ipso facto, vitiate such remarks, provided remarks were not tainted with malice, bias or hostility. Unexplained inordinate delay, however, could adversely reflect on adverse remarks--Where there was a delay of about two years in recording/communicating adverse remarks to civil servant and absolutely no explanation was forthcoming from Reporting Officer for said extremely inordinate delay and allegedly there was altercation between Reporting Officer and the civil servant in view of circumstances, belated communication must reflect adversely on adverse remarks. [p. 386] C & D

1995 SCMR 768; 1996 SCMR 256; 1999 SCMR 1587; PLD 1987 SC 271 and 2004 PLC (C.S.) 236 ref.

(c) Civil service--

Adverse remarks--Counselling before recording adverse remarks--Necessity--Counselling before recording adverse remarks, was as important, as personal hearing, in a case of adverse action against any officer. [p. 387] E

(d) Civil service--

Adverse remarks--Expunction of adverse remarks--Performance Evaluation Report, should be objective, based on some material and should not be personalized--Analysis of adverse remarks against civil servant would show that it was a subjective assessment of civil servant which was not based on any objective material from which quality and output of work of civil servant had to be assessed by Reporting Officer. Remarks against civil servant to the effect "An ambitious officer who can ruthlessly pursue his objective" was a highly personalized remarks. What were the objectives which ambitious officer ruthlessly pursued, had not been specified--Assessment of civil servant made by Reporting Officer was based on peer view--Lingering, lasting distaste of alleged altercation between civil servant and Reporting Officer appeared to be

PLC (Service)

Arshad

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No 33 Adjacent to

judgment, were not impleaded as respondents, the judgment in the petition (by the Single Judge) qua them had attained finality and governed the situation--Petitioners, in circumstances were entitled to relief. [p. 13] A

Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499; Khawaja Abdul Hameed Nasir and others v. National Bank of Pakistan and others 2003 SCMR 1030; Hakim Muhammad Nabi Khan and 2 others v. Warasatullah through Legal Representatives 1987 SCMR 1698 and Pir Bakhsh represented by his legal heirs and others v. The Chairman, Allotment Committee and others (PLD 1987 SC 145 ref.

Sh. Masood Akhtar for Petitioners.

Ch. Aamer Rehman, A.-A.G. Punjab for Respondent.

Date of hearing: 2nd November, 2005.

JUDGMENT

SYED ZAHID HUSSAIN, J.--The petitioners had applied for the posts advertised for recruitment, respectively. According to them the merit list was prepared and displayed; however, they were not issued the appointment letters due to a ban imposed on recruitments dated 22-2-1997. The said ban was assailed by some similarly situated persons through various writ petitions. In W.P. No. 6592/97 the main judgment was delivered by a learned Single Judge of this Court who accepted the same on 29-4-1999. The petitioners herein though were not initially parties but were impleaded as parties to the same Intra-Court Appeal No. 584 of 1999 filed against the said judgment was accepted by the learned Division Bench of this Court on 27-9-1999. The matter then was taken up before the Hon'ble Supreme Court of Pakistan in C.A. No. 493 of 2000 to C.A. No. 498 of 2000 and the judgment rendered by the I.C.A. Bench was set aside and that of the learned Single Judge dated 29-4-1999 was restored. The petitioners approached the respondents for the redressal of their grievance i.e. the issuance of appointment orders but their request was declined on the ground that they were not parties before the Hon'ble Supreme Court of Pakistan. This petition has been filed in that context.

2. In almost similar background W.P. No. 334 of 2005 has arisen which will stand disposed of accordingly. The petitioner in W.P. No. 6471 of 2005 though had applied to become party in the writ petition yet his application remained unconsidered. He had however filed C.M.P. No. 1848 of 2000 in C.A. No. 494 of 2000 before the Hon'ble Supreme Court of Pakistan. Since the import of the judgment of the Hon'ble Supreme Court of Pakistan is not likely to have different effect and

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 appellations qua him this petition stand disposed of through this judgment.

It is contended by the learned counsel that not only that the judgment of the Hon'ble Supreme Court of Pakistan laying down a principle governs the situation and applies to all similarly situated persons, the petitioners though were party in W.P. No. 6592/92, they were not impleaded as respondents in I.C.A. No. 584/99, therefore, judgment of the learned Single Judge had become final qua them and the respondents were very much bound by the same. In the context reliance has been placed upon Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others (2005 SCMR

The learned Additional Advocate-General Punjab however contends that since the petitioners were not party before the Hon'ble Supreme Court of Pakistan they cannot be extended benefit of the said judgment.

The respective contentions have been considered. It may be observed that in the precedent case of Tara Chand (Supra) it was observed "when Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servants who litigated, but also of other civil servants, who may not have taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. This Court in the case of Khawaja Abdul Hameed Nasir and others v. National Bank of Pakistan and others 2003 SCMR 1030 also extended the benefit to all the persons falling within the same category in order to do complete justice. To further fortify, reference is made to the case of Hakim Muhammad Nabi Khan and 2 others v. Warasatullah through Legal Representatives 1987 SCMR 1698, wherein the Court had allowed benefit of relief to non-appearing party of doing complete justice". Thus, besides the dictates of justice as highlighted by the Hon'ble Supreme Court of Pakistan, the other principle attracted to the situation is that the petitioners though had indeed been party in the writ petition yet while filing Intra-Court Appeal against the judgment were not impleaded as respondents. On the strength of the principle laid down in Pir Bakhsh represented by his legal heirs and others v. The Chairman, Allotment Committee and others (PLD 1987 SC 145) the judgment of the learned Single Judge qua them had attained finality and governed the situation. On both counts the petitioners were entitled to the relief which has unjustifiably been denied to them on erroneous and untenable premises.

Attended
 Muhammad Arshad Khan Tanoli
 Advocate High Court
 Office No 33 Adjacent to
 Court for Allotment

The writ petition is accepted accordingly with no order as to costs.

M.B.A/1-125/L

Petition accepted.

2006 P.L.C.(C.S.) 14

[Supreme Court of Pakistan]

Present: Muhammad Nawaz Abbasi and Mian Shakerullah Jan, JJ

AUDITOR-GENERAL OF PAKISTAN and others

versus

MUHAMMAD ALI

Civil Appeals Nos. 199, 200, and 201 of 2002, decided on 6th October 2005

(On appeal from the judgment dated 16.10.2000 passed by the Federal Service Tribunal Islamabad in Appeals Nos. 45/Q of 1999 and 2/Q of 2000)

(a) Constitution of Pakistan (1973) —

Art. 212(3) — Leave to appeal was granted by Supreme Court to consider whether on the ground of inefficiency and negligence, major penalty of compulsory retirement could have been converted and modified to that of reduction in time scale by three stages in exercise of appellate jurisdiction of Service Tribunal and that what type of inefficiency and negligence could attract imposition of major penalty. [p. 10] A

(b) Service Tribunals Act (LXX of 1973) —

St. 4 & 5 — Government Servants (Efficiency and Discipline) Rules, 1974: Rr. 2 & 3 — Compulsory retirement from service — Carelessness an act of misconduct — Deterrent and reformatory punishment — Imposition and scope — Converting major penalty into minor penalty — Senior officers who equally shared the responsibility of negligence in transaction of over payment, were awarded minor penalty of recovery of nominal amount of Rs. 5,000 each, whereas civil servants being subordinate officials, on the basis of same set of facts, had been dealt with severely in the matter of punishment — Service Tribunal allowed the appeals filed by civil servants and penalty of compulsory retirement from

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was converted into reduction in time scale by three stages for two years. Plea raised by authorities was that civil servants were negligent and inefficient and were responsible for causing loss to Government. — Validity — Carelessness was an act of negligence which does not strictly fall within the ambit of misconduct as defined in R.2 of Government Servants (Efficiency and Discipline) Rules, 1973 but it was a valid ground on the basis of which a Government servant could be awarded penalty as provided in R.3 of Government Servants (Efficiency and Discipline) Rules, 1973. — Element of bad faith and dishonesty might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be sufficient to make the same a case of grave negligence inviting severe punishment. — Philosophy of punishment was based on the concept of reformation which might be either through the method of deterrence or reformation. — Purpose of deterrent punishment was not only to maintain discipline with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of society. — Imposition of minor penalty in law was to make an attempt to reform the individual wrong doer. — In service matters, extreme penalty for minor offence depriving a person from right of earning would defeat the reformatory concept of punishment in administration for justice. — Supreme Court declined to take any exception to the view of the matter taken by Service Tribunal. — Appeal was dismissed. [p. 17] B

Raja Muhammad Irshad, D.A - G. for Appellants

Hafiz S.A. Rehman, Senior Advocate Supreme Court, and M.A. Advocate-on-Record for Respondents

Date of hearing: 6th October, 2005

JUDGMENT

MUHAMMAD NAWAZ ABBASI, J. — These connected appeals filed in the Court, have been directed against the judgment dated 16.10.2000 passed by the Federal Service Tribunal whereby the penalties of removal/compulsory retirement from service awarded to respondents by the competent authority, were converted into reduction in time scale by three stages for two years without cumulative effect and the appeals of the respondents were partly allowed. These appeals in which leave was granted vide order dated 16.2.2002, raise a common question of law and facts, are proposed to be disposed of through this single judgment. Leave granting order is read as follows: — Through this order, we propose to dispose of above captioned three petitions filed on behalf of Auditor General of Pakistan to

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VOLUME XLII

2009

THE
Supreme Court Monthly Review

2009 S C M R 1

[Supreme Court of Pakistan]

Present: *Abdul Hameed Dogar, C.J.,
Ijaz-ul-Hassan Khan, Muhammad Qaim Jan Khan
and Ch. Ejaz Yousaf, JJ.*

GOVERNMENT OF PUNJAB, through Secretary,
Education, Civil Secretariat, Lahore
and others — Petitioners

versus

SAMEENA PARVEEN and others — Respondents

Criminal Petitions Nos 71-L and 72-L, Civil Petitions 215-L, 216-L,
217-L, 218-L, 224-P to 236-L of 2006, decided on 29th April 2008

(On appeal from the judgment, dated 29-1-2008 of the Lahore
High Court, Lahore passed in Cr.O.P. No 370/W and 561/W of 2007
and Civil Petitions Nos 11525, 11263, 11516, 11662, 11663, 11766, 11881,
11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 643 and
619 of 2008)

Administration of justice: If a Tribunal or the Supreme Court
decides a point of law relating to the terms and conditions of a civil
servant who litigated, and there were other civil servants, who may not
have taken any legal proceedings, in such a case, the dictates of justice
and rule of good governance demand that the benefit of the said decision
be extended to other civil servants also, who may not be parties
to that litigation, instead of compelling them to approach the Tribunal or

Attested

Muhammad Arshad Khan Tariqi
Advocate High Court
Office No. 33 Adjacent to
District Court, Abbottabad

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any other legal forum--All citizens are equal before law and entitled to equal protection of law as per Art.25 of the Constitution [p. 4] A & B

Hameed Akhtar Niazi v. The Secretary, Establishment Division Government of Pakistan and others. 1996 SCMR 1185 and Tara Chann and others v. Karachi Water and Sewerage Board, Karachi and others. 2005 SCMR 499 fol.

Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department, Government of Punjab and another. 2000 PLC (C.S.) 867 ref.

Mrs. Afshan Ghazanfar, A.A.G. Punjab and Rana Abdul Qayyum, D.S. (Education) Punjab for Petitioners.

S.M. Tayyab, Senior Advocate Supreme Court for Respondents (in Cr. Ps. Nos. 71-L, 72-L and C.P. 224-L of 2008).

Nemo for other Respondents.

ORDER

ABDUL HAMEED DOGAR, C.J. Through this order we intend to dispose of above captioned petitions filed against common judgment, dated 29-1-2008 passed by learned Judge in Chambers of Lahore High Court, Lahore whereby Cr. O.P. No. 370/W and 561/W of 2007, Writ Petitions Nos. 11525, 11263, 11516, 11662, 11663, 11766, 11881, 11835, 12136 and 12185 of 2007, 86, 123, 274, 345, 599, 64 and 11619 of 2008 filed by respondents were allowed and the impugned orders passed by petitioner/authority were set aside.

2. Briefly stated facts giving rise to the filing of instant petitions are that respondents were appointed as PTC Teachers during the year 1995/1996 after completion of all legal requirements and they joined their respective place of posting. After sometime their appointments were cancelled being bogus vide order No. 277/E-1, dated 3-4-1998. This order was assailed before learned Lahore High Court, Lahore and same was declared to be without lawful authority in the case reported as Mst. Muqqadas Akhtar and another v. Province of Punjab through Secretary Education Department, Government of Punjab and another. 2000 PLC (C.S.) 867. The relevant paragraph is reproduced as under:—

"Consequently the petitioners are declared to be in service and the action of the Headmasters/Incharge of the Schools stopping the petitioners from performance of their duties as PTC Teachers on the basis of the above said impugned order, is declared to be without lawful authority. It is, however, clarified

that the department is at liberty to proceed against petitioners, if so desired, on individual basis under the relevant law and under the Punjab Civil Servant (Efficiency and Discipline) Rules, 1975."

In view of above judgment, the respondents were absolved of the charges of bogus appointments. But later on once again the services of respondents were terminated vide order, dated 3-8-2005, which order was challenged before learned Lahore High Court, Lahore through Writ Petition No. 16864 of 2005. The said writ petition was allowed vide judgment, dated 11-12-2006 and the impugned order was declared as illegal and without lawful authority. Similarly, one of the teachers namely Mst. Naseem Akhtar assailed the order, dated 3-8-2005 before Punjab Service Tribunal, Lahore through Appeal No. 903 of 2006 which was also allowed vide judgment, dated 4-9-2006. The said judgment was maintained by this Court in Civil Petition No. 1960-L of 2006 vide judgment, dated 2-11-2006. On 26-9-2007 once again the services of respondents were terminated. Feeling aggrieved they filed above mentioned petitions before the learned Lahore High Court, Lahore which were allowed vide impugned judgment as stated above.

3. It is mainly contended by learned A.A.G. Punjab appearing on behalf of petitioners that the jurisdiction of the learned High Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 in matters involving determination of terms and conditions of civil servants. She further contended that the appointments of the respondents were bogus and fake as they were never selected by the competent authority, therefore the orders of dismissal passed by departmental authority were in accordance with law, which did not call for any interference by this Court.

4. On the other hand, Mr. S.M. Tayyab, learned Senior Advocate Supreme Court appearing on behalf of some of the respondents supported the impugned judgment and contended that appointments of respondents had taken place in accordance with rules and prescribed procedure. They submitted their applications in pursuance of advertisement of the posts of PTC Teachers. They passed the required test and were appointed by the competent authority. According to him, the respondents were in service for about 9-10 years and during this period no objection was raised and subsequently on vague allegations they were dismissed from service. He further contended that cases of respondents were at par with Mst. Naseem Akhtar which was decided by this Court in Civil Petition No. 1960-L of 2006 vide judgment, dated 2-11-2006.

5. We have considered the arguments of both the parties and have gone through the record and proceedings of the case in minute

Attended
Muhammad Arshad Khan Tanc.
Advocate High Court
Office No 33 Adjacent to
Distt Bar Abbottabad

(65)

particulars. The matter has already been decided by this Court in the case of Mst. Naseem Akhtar (supra) and it has been held that the appointment orders of the respondents as PTC Teachers were genuine. It was held by this Court in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forum. This view was reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before law and entitled to equal protection of law.

In this view of the matter, we are of the view that no grounds for interference in the impugned judgment is made out. Accordingly, the petitions being devoid of force are dismissed and leave to appeal refused.

M.B.A./G-13/SC Petitions dismissed.

2009 S.C.M.R. 4
[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J.
Ch. Ejaz Yousaf and Muhammad Farrukh Mahmud, JJ

MAH GUL - Appellant

versus

THE STATE - Respondent

Criminal Appeal No 212 of 2003, decided on 10th April, 2008

(On Appeal from the judgment dated 25-9-2002 of the Peshawar High Court, Peshawar in Criminal Appeal No 294 of 2002)

(a) Penal Code (XLV of 1860) -

S 302 - Anti-Terrorism Act (XXVII of 1997) - S 7 - Qanun-e-Shahadat (10 of 1984) - Art 22 - Reappraisal of evidence - Identification parade - Description of accused - Benefit of doubt - F.I.R. alleged that at night time all the three accused opened fire on police party from

behind the bushes due to which one police official was killed. One accused was sentenced to death by Trial Court while other two accused were awarded imprisonment for life. High Court set aside conviction and sentence awarded under S-302 P.P.C. to two co-accused and maintained death sentence of the accused. Plea raised by accused was that neither his description was mentioned in F.I.R. nor any test identification parade was conducted during investigation. Validity of F.I.R. did not contain requisite details regarding identification of accused, nor his description by appearance was given there with sufficient details. Omission so made was fatal to prosecution case, particularly when neither accused persons after their arrest were put to identification test, nor any of prosecution witnesses had picked out or identified the accused at trial. Prosecution had failed to produce confirmatory evidence to prove charge against the accused and there was room for doubt, benefit whereof must go to accused. Supreme Court set aside conviction and sentence awarded to accused and acquitted him of the charge. Appeal was allowed. [pp. 9/11] A & F

Daniyal Boyd (Muslim name Safulh) and another 1992 SCMR 196 State through Advocate General Sindh vs Farman Hussain and others PLD 1995 SC 1; Muhammad Bashir Alam v. The State PLD 1948 (Pak) 1; Ibrahim Bhak's case PED 1955 FC 113 and Nadir Khan v. The State PLD 1992 FSC 390, re.

Qanun-e-Shahadat (10 of 1984) -

Arts. 2(c) & 22 - Statement made in court by witness and identification parade - Distinction - Statement made in court by witness substantive evidence within the purview of Art 2(c) of Qanun-e-Shahadat 1984, and identification made by witness at the parade is only corroborative in nature. Where accused was not previously known to the witness and he had only fleeting glimpse of the accused, holding of test identification parade becomes essential because usually statements of witnesses are recorded in courts much after the occurrence and therefore, possibility that witness might have mistakenly nominated or pointed out an accused cannot be ruled out. [p. 10] B

Penal Code (XLV of 1860) -

S 302 - Appreciation of evidence - Identification of accused during trial - Scope - Evidence of identification of accused at trial for the first time is inherently of a very weak character. Prosecution in order to bring conviction must establish that accused was correctly and properly identified by the witness at the time of occurrence and such goal could be achieved unless evidence furnished by prosecution at trial was able to provide answers to certain questions e.g. as to how long did witnesses have the accused under observation, what distance and

4/11/08

Muhammad Arshad Khan Tanoli
Advocate High Court
Office No 33 Adjacent to
Dist. Court

ANNEX-"J"



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

66

NO. FD (SOSR-1) 2-123/ 2018
Dated Peshawar the: 18-10-2018

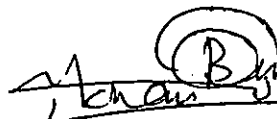
To:

The Section Officer (Estt);
Agriculture Livestock & Cooperative Deptt:
Peshawar.

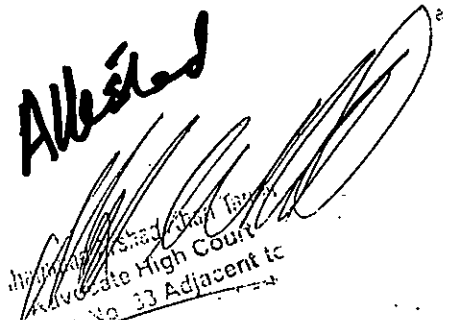
Subject: -

GRANT OF ADVANCE / PREMATURE INCREMENT ON PROMOTION
FROM THE POST OF AGRICULTURE OFFICER (BS-17) TO THE POST
OF AGRICULTURE OFFICER (SUPERVISORY BS-17) WITH THE
SPECIAL PAY OF RS.150 PER MONTH FOR THE PURPOSE OF
PENSIOANRY BENEFIT WITH EFFECT FROM 01-07-2005

I am directed to refer to your letter No.SOE(AD)/21-174/2013/M (M. Younas) dated 03-09-2018 on the subject noted above and to state that Finance Department regret its inability to accede to the request on the ground that the facility of personal pay was not available prior to introduction of Pay Revision 2005.


Section Officer (SR-1)

Allesed


Advocate, Peshawar High Court
Office No. 33 Adjacent to

cc (E) 4/4
19-10-2018
Agriculture Deptt.

ASCI
Part D
27/10

(15) Letters in (Office Work Local D)

ANNEX- "K"



GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

67

NO.SOE(AD)21-174(2013)M. Younas
Dated Peshawar, the October 29, 2018

To

The Director General,
Agriculture (Extension),
Khyber Pakhtunkhwa, Peshawar.

SUBJECT: - GRANT OF ADVANCE/PREMATURE INCREMENT ON PROMOTION FROM THE POST OF AGRICULTURE OFFICER (BPS-17) TO THE POST OF AGRICULTURE (BPS-17) SUPERVISORY WITH THE SPECIAL PAY OF RS. 150/- PER MONTH FOR THE PURPOSE OF PENSIONARY BENEFIT W.E.F 01.07.2005.

I am directed to refer to your office letter No. Acctt/9/30-B/15021/DGA dated 08.08.2018 on the subject noted above and to enclose herewith a copy of Section Officer (SR-I), Government of Khyber Pakhtunkhwa, Finance Department, (Regulation Wing), letter No. FD (SOSR-I)2-123/2018 dated 18.10.2018, which is self explanatory for information and further necessary action and request to inform the officer concerned through your good office, please.

Encl: As above.

AKHTAR ALI SHAH
SECTION OFFICER-ESTT:
ole

Endst. of even No. & Date.

Copy to:

1. The Section Officer(SR-I), Government of Khyber Pakhtunkhwa, Finance Department, (Regulation Wing), with reference to his letter quoted above.
2. P.S to Secretary Agriculture Department, Khyber Pakhtunkhwa, Peshawar.
3. P.A to Deputy Secretary (Admn) Agriculture Department, Khyber Pakhtunkhwa.
4. Master File.

*5. Muhammad Younas s/o Mir Husain
Ex-ED 0/00 Agriculture Abbottabad
House #30 street #2 of Sir Syed
colony, Islamabad Abbottabad*

*Muhammad Younas Khan Tanoli
Advocate High Court
Office No. 33 Adjacent to*



GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE DEPARTMENT

NO.SOE(AD)/21-174/2013/M
Dated Peshawar, the 03/09/2018.

To

The Secretary to
Government of Khyber Pakhtunkhwa,
Finance Department.

[Handwritten Signature]
Office No 33 Adjacent
Distt. Peshawar

SUBJECT:-

GRANT OF ADVANCE/PREATURE INCRMENT ON PROMOTION FROM THE POST OF AGRICULTURE OFFICER (BS-17) TO THE POST OF AGRICULTURE OFFICER (SUPERVISORY BS-17) WITH THE SPECIAL PAY OF RS. 150/-PER MONTH FOR THE PURPOSE OF PENSIONARY BENEFIT WITH EFFECT FROM 01/07/2005.

Dear Sir,

I am directed to refer to the subject cited above and to state that, application alongwith relevant documents (copies enclosed) in respect of Mr. Muhammad Younas, Ex-EDO Agriculture / District Director Agriculture (BS-19), Abbottabad was forwarded to the Government of Khyber Pakhtunkhwa Law Department for soliciting their advise in the matter vide this Department letter of even number dated 16/8/2018 (copy enclosed). In response to this department letter, the Law Department furnished their advice "stating that being a financial matter, Finance Department may be approached under the Khyber Pakhtunkhwa Government Rules of Business, 1985 for further processing of the case (copy enclosed)".

2. The background history of the case is that, Mr. Muhammad Younas, Ex-EDO Agriculture / District Director Agriculture (BS-19), Abbottabad has submitted application for the subject advance / premature increment on promotion from Agriculture Officer (BPS-17) to Agriculture Officer (Supervisory BPS-17) on the analogy of Mr. Ishtiaq Ahmad, Ex-District Officer Agriculture, Kohat in light of the judgment of Khyber Pakhtunkhwa, Service Tribunal, Peshawar.

3. Mr. Ishtiaq Ahmad, the Ex-Officer while serving as Agriculture Officer was promoted as Agriculture Officer (supervisory) (BS-17) with special pay of Rs.150/- P.M vide order dated: 16-02-2005 and he was entitled to one advance increment in view of Khyber Pakhtunkhwa Civil Service Pay Revision Rules, 1978 amended on 29-04-1984 which was not allowed to the appellant as he was drawing his salary at the sealing of BPS-17. That the appellant became entitled to the grant of promotion and increment on the strength of Finance Department Notification 09-07-2005, but he was not granted the same while similarly placed Junior officers promoted later on in the year 2008, were granted the said increment that the matter was agitated before the Competent Authority including departmental appeal which was regretted on 27-08-2011 communicated to the appellant on 07-09-2011 and the instant service appeal on 03-10-2011.

4. In light of the judgment of Khyber Pakhtunkhwa Service Tribunal and advice of the Finance Department, the Ex-Officer Mr. Ishtiaq Ahmad was allowed one advance increment upon his promotion on the recommendation of DPC from Agriculture Officer BPS-17 to Agriculture Officer (supervisory) (BPS-17) for the purpose of pay and pensionary benefits from 01-07-2005.

5. On the same analogy, Mr. Muhammad Younas, Ex-EDO / District Director Agriculture has requested for grant of one advance increment in light of the Khyber Pakhtunkhwa. Service Tribunal judgment as Mr. Ishtiaq Ahmad was junior to Mr. Muhammad Younas as in the seniority list Mr. Ishtiaq Ahmad was at S.No.14, while Mr. Muhammad Younas was at S.No.06.

6. This department forwarded the appeal of Mr. Muhammad Younas, Ex-EDO / District Director Agriculture to the Director General, Agriculture (Extension), Khyber Pakhtunkhwa for views and comments. In response the Director General, Agriculture (Extension), Khyber Pakhtunkhwa, Peshawar

forwarded views / comments on the said application furnished by the District Director Agriculture Abbottabad, wherein, Para-V, it is intimated that the officer Mr. Muhammad Younas was entitled for one premature / advance increment as personal pay at the time to promotion from Agriculture Officer (BPS-17) to the post of Agriculture Officer (Supervisory) (BPS-17) as the officer has been discriminated against and has not been treated in accordance with law and other similar officers were allowed with this benefit.

7. The Hon'ble Supreme Court of Pakistan in its judgment in 1996 SCMR 1185 has dictated that "we may observe that if the Tribunal or This Court besides appointment of Law relating to the terms of reference of which covers not only the case of Civil Servant who litigated but also of the other Civil Servants, who may have not taken any Legal proceedings, in such a case the dictates of Justice and Rule of good governance demands that the benefits of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling to approach the Tribunal or any other Legal forum".

8. The above views were re-iterated in 2005 PLC CS 368, 2006 PLC CS 11 as well as in 2009 SCMR-1.

The Government of Pakistan, Finance Division (Regulation Wing) vide No:11(30)R-2/2010-119 dated: 05-11-2012 declared in para-5 that "in pursuance of the judgment of the Supreme Court of Pakistan in Mr. Hameed Akhtar Niazi Case (1996 SCMR-1185) it was been decided that the benefit of judgment of the Supreme Court of Pakistan mentioned above may be extended in all other similar cases the non litigating employees accordingly, in partial modification of Finance Division O.M referred to at Para-1 above. It has been decided to allow one premature increment in the pay scale of the higher post in fixation of pay on promotion within the same scales (copy enclosed).

9. Keeping in view of the position, explained above, the Finance Department is requested to accord their concurrence regarding grant of one premature increment for the purpose of pay and pensionary benefits with effect from 01-07-2005 in favour of the above named officer please.

Encl: As above.

Yours faithfully,

(MAMZOOR AHMAD AFRIDI)
SECTION OFFICER (ESTT:)

CC:-

1. PS to Minister for Agriculture, Livestock, Fisheries and Cooperative, Khyber Pakhtunkhwa.
2. PS to Secretary Agriculture, Livestock and Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
3. PA to Deputy Secretary (Admn) Agriculture Department.

SECTION OFFICER (ESTT:)

Attested
Muhammad Arshad Khan Tangi
Advocate High Court
Office No 33 Adjacent to
District Court

| | | | | | |
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| | | | | | |
|--|--|--|--|--|--|

ANNEX- " M "

70

NO. 2001

Dated

To

The Director General Agriculture (Extension),
Khyber Pakhtunkhwa Peshawar.

Muhammad
Advocate High Court
Office No 33 Adjacent to
District Abbottabad

Subject: GRANT OF ADVANCE/PREATURE INCREMENT ON PROMOTION FROM THE POST OF AGRICULTURE OFFICER BS-17 TO THE POST OF AGRICULTURE OFFICER BS-17 (SUPERVISORY) WITH THE SPECIAL PAY OF RS 150/PER MONTH FOR THE PURPOSE OF PENSIONARY BENEFITS W.E.F. 01-07-2005.

Please refer to your office No. Acctt: 12199 dated 11.06.2018 on the subject cited above.

The desired comments are as follow:

- I. In pursuance of the recommendations of the Departmental Promotion Committee, The Govt: of Khyber Pakhtunkhwa(N.W.F.P) promoted Mr. Muhammad Younas the then Agriculture Officer BPS 17 to the post of Agriculture Officer (Supervisory) BPS 17 with special pay of Rs. 150/PM vide Notification NO. SOE(AD)V-8/2003/KC dated 18-06-2004.
- II. As per the amendment dated 29-04-1984 made in the KPK (NWFP) Civil Servants Pay Revision Rules, 1978, if a civil servant is promoted to a post in the same scale in his own line with the only difference that the higher post carries a special pay, he shall be allowed one advance increment in that scale with the effect from the date of his promotion.
- III. On the face of record it is pertinent to mention here that Mr. Muhammad Younas the then Agriculture Officer BPS 17 was promoted on 18-06-2004 to the post of Agriculture Officer (Supervisory) BPS 17 with special pay of Rs. 150/PM but was not granted one Advance/pre-mature increment. (copy of the pay record is enclosed)
- IV. It is worth mentioning here that officers junior to Mr Muhammad Younas such as Mr, Muhammad Iqbal, Mr. Zulfiqar Ahmed and others Agriculture Officers were when promoted from Agriculture Officer BPS 17 to Agriculture Officer (Supervisory) BPS17 with special pay of Rs. 150/PM Were also granted one advance / premature increment in sort of personal pay. Eventually the senior officer Mr Muhammad Younas due to deprived of premature/advance increment got less pay and benefit than junior officers by the virtue of advance/ premature increment on promotion from BPS 17 to BPS 17 (supervisory).
- V. This office is of the view that the officer Mr Muhammad Younas was entitled for one premature/advance increment as personal pay at the time of promotion from Agriculture Officer BPS 17 to the post of Agriculture Officer (Supervisory) BPS 17 as the officer has been discriminated against and has not been treated in accordance with Law and other similar officers were allowed this benefits:

Submitted for further necessary action please.

No. 2001 DDA

16-7-18

District Director Agriculture
Abbottabad

Endst: Even No & Date

Copy forwarded for information and necessary action to Mr. Muhammad Younas Ex-District Director Agriculture Abbottabad.

District Director Agriculture

71

Alexis
M. H. Khan
Advocate High Court
Office No. 33 Adjacent to
Distt Bar Abbottabad

The statement showing the Basic Pay in respect of Mr. Muhammad Younas Agriculture Officer/ District Director Agriculture year wise from the date of his appointment 15-01-1977 to the date of retirement 02-04-2013.

| Date | BASIC PAY | PERSONAL PAY |
|---|-----------|--------------|
| 01.05.1977 | 900 | 0 |
| 01.12.1977 | 950 | 0 |
| 01.12.1978 | 1000 | 0 |
| 01.12.1979 | 1050 | 0 |
| 01.12.1980 | 1100 | 0 |
| 01.07.1981 | 1150 | 0 |
| 01.12.1981 | 1210 | 0 |
| 01.12.1982 | 1270 | 0 |
| 01.07.1983 (pay revised) | 2440 | 0 |
| 01.12.1983 | 2560 | 0 |
| 01.12.1984 | 2680 | 0 |
| 01.12.1985 | 2800 | 0 |
| 01.12.1986 | 2920 | 0 |
| 01.07.1987 | 3770 | 0 |
| 01.12.1987 | 3770 | 0 |
| 01.12.1988 (allowed move over from BPS-17 to BPS -18) | 4070 | 0 |
| 01.12.1989 | 4270 | 0 |
| 01.12.1990 | 4465 | 0 |
| 01.07.1991 | 6204 | 0 |
| 01.12.1991 | 6475 | 0 |
| 01.12.1992 | 6475 | 0 |
| 01.12.1993 | 6475 | 0 |
| 01.12.1994 | 8745 | 0 |
| 01.12.1995 | 8745 | 0 |
| 01.12.1996 | 8745 | 0 |
| 01.12.1997 | 8745 | 0 |
| 01.12.1998 | 8745 | 0 |
| 01.12.1999 | 8745 | 0 |
| 01.12.2000 | 8745 | 0 |
| 01.12.2001 | 14115 | 0 |
| 01.12.2002 | 14580 | 0 |
| 01.12.2003 | 15045 | 0 |

79

Abdullah
Abdullah Khan Tanoli
Advocate High Court
Office No 33 Adjacent to
Distt. Jor Abbottabad

| | | |
|--|-------|------|
| 18.06.2004 Promoted to the BPS 17 (supervisory) but no premature increment granted | 15510 | 0 |
| 01.12.2004 | 15510 | 0 |
| 01.07.2005 | 17840 | 0 |
| 01.12.2005 | 17840 | 535 |
| 01.12.2006 | 17840 | 1070 |
| 01.07.2007 | 20510 | 1230 |
| 01.12.2007 | 20510 | 1845 |
| 01.07.2008 | 24650 | 2220 |
| 01.12.2008 | 24650 | 2960 |
| 09.05.2009 promoted on regular basis from BPS 17 to BPS 18 | 28720 | 0 |
| 01.12.2009 | 29650 | 0 |
| 01.12.2010 | 30580 | 0 |
| 01.07.2011 | 48500 | 0 |
| 01.12.2011 | 48500 | 0 |
| 01.07.2012 | 51800 | 0 |
| 01.12.2012 | 53400 | 0 |
| 31.03.2013 | 53400 | 0 |

Naaz
District Director Agriculture
Abbottabad

ANNEX - "N"

DIRECTORATE GENERAL,
AGRICULTURE (EXTENSION) KHYBER PAKHTUNKHWA, PESHAWAR.

73

No. Acct/9/30-B/_____/DGA
Dated Peshawar the ____/2018.

To,

The Section Officer (Estt)
Govt. of Khyber Pakhtunkhwa,
Agriculture, Livestock & Cooperation Department
Peshawar.

Subject: GRANT OF ADVANCE/PREMATURE INCREMENT ON PROMOTION FROM THE POST OF AGRICULTURE OFFICER (BPS 17) TO THE POST OF AGRICULTURE (BPD-17) SUPERVISORY WITH THE SPECIAL PAY OF RS.150/- PER MONTH FOR THE PURPOSE OF PENSIONERY BENEFITS W.E.F 01.07.2005.

Memo:-

Reference your memo No.SOE(AD)17-358/2017 dated Pesh. the May 14, 2018.

The vies/comments on the application of Mr.Muhammad Younas, Ex-EDO, Agriculture Abbottabad, furnished by District Director Agriculture, Abbottabad are enclose herewith for favour of information & further necessary action please.

Encl as above.

US 22-23

DIRECTOR GENERAL

Endst No._____/DGA
Dated Peshawar the 8/8/2018.

Copy forwarded to :

1- The District Director Agriculture, Abbottabad w.r to his memo No.2000 dated 16.07.2018.

2- Mr Muhammad Younas, Ex Executive District Officer, Agriculture House No.30 streeL No.8, Sir Syed Colony Mindiya, Abbottabad for information.

DIRECTOR GENERAL

Attested

Received by Mr. Khad Janon
by the Section Officer
Office No. 30, Abbottabad

DESPATURE
TO DIRECTOR GENERAL
AGRICULTURE (EXTENSION)
KHYBER PAKHTUNKHWA
JAMRUD ROAD, PESHAWAR.

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

TB

Appeal No. 1430 of 20 18

M. Younas Appellant/Petitioner

Versus

Through Secy: Finance Dept. Respondent

Respondent No. 5

Notice to:

Distt. Account Officer, Abbottabad

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 21.3.2019 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 26th

Day of Feb: 20 19.

at Camp Court A. Akbar

Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

TB

Appeal No.....1430..... of 2018

.....M. Younas.....Appellant/Petitioner

Versus

.....Through Secy: Finance Peshawar.....Respondent

Respondent No.....T.....

Notice to: —

Copy of 1a Pk through Secy: Finance Peshawar.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 21-3-2019..... at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this..... 26/2

Day of..... Feb:..... 20 19

at Camp Court A. Abad

Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

27/2/19

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

TB

No.

Appeal No. *1430* of 20*18*

M. Younas Appellant/Petitioner

Versus

Through Secy Finance Distt
Respondent

Respondent No. *5*

Notice to: - *Distt. Accounts officer, A. Abad*

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on *18/5/19* at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

~~Copy of appeal is attached.~~ Copy of appeal has already been sent to you vide this

office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this *29/5/18*

Day of *May* 20 *19*

at Camp Court A. Abad

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.