

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**PESHAWAR**

Service Appeal No.15184/2020

Date of Institution ... 23.11.2020  
Date of Decision ... 24.11.2022

Umar Farooq Shah, SCT, GHSS Risalpur Cantt. Nowshera.

... (Appellant)

**VERSUS**

Director, Elementary & Secondary Education Department Peshawar and  
three others.

... (Respondents)

Bilal Ahmad Kakazai  
Advocate

... For appellant.

Kabir Ullah Khattak  
Additional Advocate General

... For respondents.

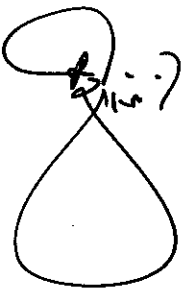
Mrs. Rozina Rehman  
Miss. Fareeha Paul

... Member (J)  
... Member (E)

**JUDGMENT**

ROZINA REHMAN, MEMBER: The appellant has invoked the  
jurisdiction of this Tribunal through above titled appeal with the prayer as  
copied below:

“That on acceptance of this service appeal the  
impugned order/notification of the respondents to the  
extent of the recovery of Rs. 27290/- being a minor penalty  
under E&D Rules 2011 be set aside & the notification of  
DCO No. 14 may please be restored.”



2. Brief facts of the case are that appellant was awarded (BPS-15) w.e.f 23.07.2009. The pay fixation party while making entry in his service book fixed his pay in BPS-14 instead of BPS-15 and also ordered recovery of excess amount received by him. He assailed this order by filing service appeal No.758/2016 whereby the matter was remitted to the pay fixation party for resolution within a period of 60 days. When the respondents failed to comply with the directions, appellant filed implementation petition. During the pendency of implementation petition, the respondents passed impugned order dated 20.06.2018, whereby minor penalty of recovery of Rs.27290/- was imposed upon the appellant. The implementation petition was adjourned sine-die, and appellant filed service appeal No.1402/2018 which was accepted and impugned order dated 20.06.2018 was set aside. However, respondents were placed at liberty to recover excess amount, if drawn, by the appellant. A notification dated 25.06.2020 was issued from DEO (M) Nowshera for recovery of Rs.27290/-. On receiving the notification, he filed departmental appeal which was not responded to, hence the present service appeal.

3. We have heard Bilal Ahmad Kakazai, Advocate learned counsel for the appellant and Kabir Ullah Khattak, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Bilal Ahmad Kakazai Advocate, learned counsel for appellant submitted that the impugned order/notification is illegal, unlawful, against

law and facts, as the said benefits in pay which were initiated from the pay of the appellant from 01.07.2018 and continued upto 01.11.2020 are according to a valid notification of DCO Nowshera and that respondents have no right to issue impugned notification which is badly time barred. He contended that no proper procedure was followed and that no such direction had been issued by this Tribunal to impose Efficiency & Discipline Rules 2011, on the appellant. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Additional Advocate General argued that the impugned order dated 20.06.2018 was set aside by this Tribunal vide judgment dated 30.10.2019, however, the judgment placed the department at liberty to recover the excess amount, if drawn by the appellant. It was submitted that the respondents acted in accordance with the verdict of this Tribunal as the appellant was wrongly up-graded to (BPS-15) because he was not entitled to such up-gradation.

6. From the record it is evident that vide notification dated 17.11.2009 issued by the then DCO Nowshera, appellant was awarded (BPS-15) w.e.f 23.07.2009. The pay fixation party while making entry in his service book on 14.03.2016 fixed his pay in (BPS-14) instead of (BPS-15) and also ordered of recovery of excess amount. The appellant was not guilty of misconduct and financial corruption. BPS-15 was granted to him on the strength of notification issued by the then DCO. The impugned order dated 20.06.2018 was set aside by this Tribunal vide its judgment dated


9/11/20

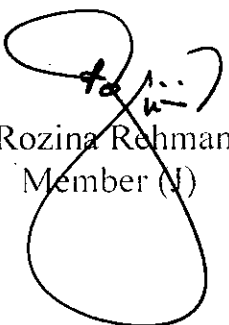
30.10.2019, however the respondents were placed at liberty to recover excess amount if drawn by the appellant. In compliance of the order of this Tribunal dated 30.10.2019 passed in service appeal No. 1402/2018 and notification vide Endst: No. 8100-05 dated 20.06.2018 regarding minor penalty imposed on appellant was set aside vide another notification dated 25.06.2020 however, the amount of Rs. 27290/- was ordered to be recovered in monthly installments by DEO(M), Nowshera. The appellant has no fresh cause of action and matter has already been decided by this Tribunal vide appeal No. 1402/2018. The impugned order dated 20.06.2018 in respect of minor penalty had already been decided and excess amount received by the appellant was ordered to be recovered in monthly installments. There is no dispute in respect of the excess amount received by the appellant, therefore, the order passed by the authority in this regard is justified and the appellant is bound to pay the same.

7. The long and short of the above discussion is that this appeal stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

24.11.2022

  
(Fareeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)

ORDER

24.11.2022


Appellant present through counsel.

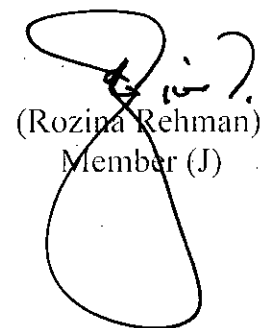
Kabir Ullah Khattak, learned Additional Advocate General  
for respondents present.

Vide our detailed judgment of today placed on file; we do  
not find any merit in the instant service appeal which is hereby  
dismissed. Parties are left to bear their own costs. File be  
consigned to the record room.

ANNOUNCED.

24.11.2022

  
(Nareeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)


13.09.2022

Bilal Ahmad Kakazai Advocate present as proxy of learned counsel for appellant.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Reply has already been submitted. Request for adjournment was made on behalf of appellant as learned counsel for appellant is busy before the District Courts, Nowshera. Adjourned. To come up for arguments on 24 / 11 / 2022 before D.B.

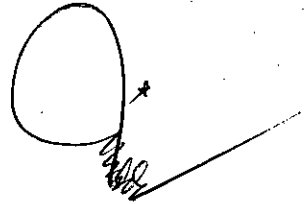
  
(Fareeha Paul)  
Member(E)

  
(Rozina Rehman)  
Member(J)

07.04.2022

Appellant in person present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Ahmad Seed, Senior Auditor and Mr. Tariq Shah, Senior Auditor for respondents present.

Written reply /comment on behalf of respondents No. 1 to 4 submitted which is placed on file. A copy of the same is also handed over to the appellant. Adjourned. To come up for preliminary hearing on 01.07.2022 before S.B.



(MIAN MUHAMMAD)  
MEMBER(E)

01.07.2022

Appellant person in person. Preliminary arguments heard and record perused

Points raised need 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, notices be issued to respondents for submission of written reply/comments. To come up for come up for written reply/comments on 13.09.2022 before D.B.



(Fareeha Paul)  
Member (E)

02.12.2021

Appellant in person present. The appellant chose and opted to argue the case personally. Preliminary arguments have been heard.

The instant service appeal has been submitted invoking jurisdiction of the Service Tribunal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned notification dated 25.06.2020 whereby recovery of an amount of Rs. 27290/- was ordered. The appellant submitted departmental appeal to respondent No.1 on 22.07.2020 which was not responded to within the stipulated statutory period, hence the instant service appeal filed on 23.11.2020. It would, therefore, be appropriate to issue a pre-admission notice to the official respondents to submit their reply/parawise comments and assist the Tribunal. Adjourned. To come up for preliminary hearing on 03.02.2022 before S.B.

  
(Mian Muhammad)  
Member(E)

03.02.2022

The Tribunal is non-functional, therefore, the case is adjourned to 07.04.2022 before S.B for the same.

  
Reader



14.10.2021

Appellant in person present.

Appellant requests for adjournment on the ground that his counsel is not available today. Granted. To come up for preliminary hearing before the S.B on 18.11.2021.

  
(MIAN MUHAMMAD)  
MEMBER (E)

18.11.2021

Appellant in person present.

Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for preliminary hearing before the S.B on 02.12.2021.

  
(MIAN MUHAMMAD)  
MEMBER (E)

25.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 15.06.2021.



Reader

22.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 10.08.2021 for the same as before.



Reader

10.08.2021

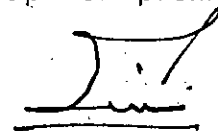
Since 10.08.2021 has been declared public holiday on account of Ist Muharram, therefore, case to come up for the same on 07.10.2021 before S.B.



Reader

07.10.2021

Appellant in person present and sought time for preliminary hearing. Adjourned. To come up for preliminary hearing before the S.B on 14.10.2021.



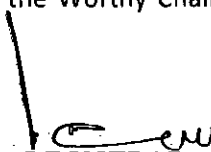

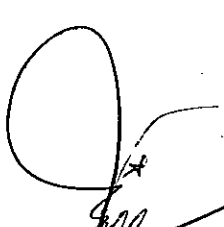
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. - **15184** /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/11/2020	<p>The appeal of Mr. Umar Farooq presented today by him 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</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>08/01/2021</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	31.12.2020	<p>Nemo for the appellant present.</p> <p>Notices be issued to the appellant and his counsel for preliminary hearing.</p> <p>Adjourned to 25.03.2021 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member(E)</p>

SCANNED  
KPST  
Peshawar