

ORIGINAL.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

Service Appeal No. ----7299---- of 2021

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 4207

Dated 9/3/2023  
Appellant.

Mohammad Arshad -----

V E R S U S

The Provincial Government through Chief Secretary, Khyber Pakhtunkhwa and three others ----- **Respondents.**

AMENDED APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 (KHYBER PAKHTUNKHWA ACT NO. I OF 1974) AGAINST THE NON-PAYMENT/STOPPAGE OF EXECUTIVE ALLOWANCE, TELEPHONE, NEWSPAPER AND POL BILL, NON-ALLOTMENT OF OFFICIAL VEHICLE AND OTHER FRINGE BENEFITS FROM 10.07.2020 TILL 18.07.2021 i.e. THE PERIOD DURING WHICH IT WAS STOPPED.

**Prayer:** (i) The part of condition of the Finance Department notification dated 02.02.2018 i.e. "Executive Allowance will not be admissible to OSD posts", has been declared as null and void and the appellant was held entitled to Executive Allowance along with all consequential benefits vide the Khyber Pakhtunkhwa Services Tribunal judgement/order dated 09.06.2021 passed in Service Appeal No. 1132/2019; therefore, the respondents may be directed to make payment to the appellant of unpaid Executive Allowance, residential telephone, newspaper bill and POL cost for the period from 10.07.2020 to 18.07.2021 and 08.03.2022 to 19.12.2022, allotment of official vehicle and other fringe benefits etc. along with cost. (ii) The respondents may be directed not to stop all these benefits to the appellant in future. (iii) Similarly, any other law/rule/instructions/notification if any is also ultra-vires of second proviso to section 10 of the Civil Servants Act, 1973, therefore, may be declared illegal, null and void and void ab-initio if any.


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Dated 09.03.2023

**Appellant-in-Person**

  
09.03.2023

**Mohammad Arshad, PCS(SG-BPS-20), Mailing Address:**  
House No. 11, Provincial Civil Officers Colony, Dabgari  
Gardens (New), Opposite Habib Medical Complex, Peshawar  
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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

Service Appeal No. -----7299----- of 2021

**Mohammad Arshad**, PCS(SG-BPS-20), Mailing Address: House No. 11, Provincial Civil Officers Colony, Dabgari Gardens (New), Opposite Habib Medical Complex, Peshawar Cantt. CNIC No. 15402-9170027-1, Email Address: arshadedo@gmail.com, Mobile No. 0348-9745323 ----- **Appellant.**

V E R S U S

1. The Provincial Government through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar -----  
----- **Respondents.**

AMENDED APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 (KHYBER PAKHTUNKHWA ACT NO. I OF 1974) AGAINST THE NON-PAYMENT/STOPPAGE OF EXECUTIVE ALLOWANCE, TELEPHONE, NEWSPAPER AND POL BILL, NON-ALLOTMENT OF OFFICIAL VEHICLE AND OTHER FRINGE BENEFITS FROM 10.07.2020 TILL 18.07.2021 i.e. THE PERIOD DURING WHICH IT WAS STOPPED.

**Prayer:** (i) The part of condition of the Finance Department notification dated 02.02.2018 i.e. "Executive Allowance will not be admissible to OSD posts", has been declared as null and void and the appellant was held entitled to Executive Allowance along with all consequential benefits vide the Khyber Pakhtunkhwa Services Tribunal judgement/order dated 09.06.2021 passed in Service Appeal No. 1132/2019; therefore, the respondents may be directed to make payment to the appellant of unpaid Executive Allowance, residential telephone, newspaper bill and POL cost for the period from 10.07.2020 to 18.07.2021 and 08.03.2022 to 19.12.2022, allotment of official vehicle and other fringe benefits etc. along with cost. (ii) The respondents may be directed not to stop all these benefits to the appellant in future. (iii) Similarly, any other law/rule/instructions/notification if any is also ultra-vires of second proviso to section 10 of the Civil Servants Act, 1973, therefore, may be declared illegal, null and void and void ab-initio if any.

Respectfully sheweth that:-

**Facts of the Case**

1. The Government of Khyber Pakhtunkhwa, Establishment Department has ordered the posting/transfer of the appellant from Director, Khyber Pakhtunkhwa Higher Education Academy of Research and Training (HEART), Peshawar to Establishment Department vide notification No. SO(E-I)/E&AD/9-88/2020 dated 09.07.2020 (**Annex-I**).

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2. The appellant has relinquished the charge of the former post on 10.07.2020 (FN) and submitted arrival report on 10.07.2020 (FN) in the Establishment Department (**Annex-II**).
3. The appellant as per Last Pay Certificate (LPC) issued by the Accountant General, Khyber Pakhtunkhwa, Peshawar office was entitled to draw Executive Allowance at the rate of Rs. 103,635/- per month against the erstwhile post of Director, Higher Education Academy of Research and Training (HEART), Peshawar (**Annex-III**).
4. The appellant as per Abstract Contingent (AC) Bill of the Academy was entitled to receive charges of residential telephone, POL and newspaper bill till July, 2020 while posted in the Academy (**Annex-IV**).
5. The Government of Khyber Pakhtunkhwa in the Finance Department on the request of Establishment Department has created OSD post for the appellant amongst others for the period from 10.07.2020 to 30.09.2020 vide its sanction letter No. BOIV/FD/2-21/OSD/12 dated 22.07.2020, extended for a period from 01.10.2020 to 31.12.2020, extended for the period from 01.01.2021 to 31.03.2021 and further extended for a period from 01.04.2021 to 30.06.2021 vide sanction letter of even No. dated 09.10.2020, 18.01.2021 and 02.04.2021 respectively ( **Annex-V**).
6. The appellant has not been paid Executive Allowance, telephone and newspaper bill, cost of POL and also stopped allotment of official vehicle by the Establishment Department/AG office from 10.07.2020 against the post of Officer on Special Duty (OSD-BPS-20). The copy of Monthly Salary Statement for the Month of October, November and December, 2020, January, February, March, April, May, June and July 2021 are attached herewith (**Annex-VI**).
7. The non-payment continued till the Government of Khyber Pakhtunkhwa in the Establishment Department decided to transfer/post the appellant against one of the Scheduled Posts as Member Board of Revenue-I vide notification No. SO(E-I)/E&AD/5-168/2021 dated 19.07.2021 (**Annex-VII**).
8. The Executive Allowance has been sanctioned to the tune of 1.5 Initial Basic Pay per month as per Pay Scale 2017 to PAS, PCS and PMS officers working against scheduled posts of Establishment and Administration Department vide Government of Khyber Pakhtunkhwa in the Finance Department notification No. FD(SOSR-II)8-7/2016-17 dated 02.02.2018 (**Annex-VIII**). The apparent reason for non-payment of Executive Allowance to the appellant is the part of the condition No. 5 of the notification which provides that "Executive Allowance will not be admissible to OSD posts and officers who are on leave reserve posts."

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9. The appellant has requested the Establishment Department vide application dated 16.04.2021 to allot him an official vehicle along with grant of arrears of POL cost since 10.07.2020 and to clear outstanding telephone and newspaper bill w.e.f. 10.07.2020 or otherwise provide a copy of law wherein these facilities are not available to the holders of OSD posts but no response has been received from the department till filing of instant appeal (**Annex-IX**).
10. The scheduled posts of Establishment and Administration Department in the appellant's case are the service/cadre posts of the appellant, which have been mentioned in the Khyber Pakhtunkhwa Province Provincial Civil Service (Secretariat Group) Rules, 1997, notified at Page-218 and onwards of the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 29<sup>th</sup> September, 1997 (**Annex-X**).
11. The updated list of scheduled posts attached with the Khyber Pakhtunkhwa Province Provincial Civil Service (Secretariat Group) Rules, 1997 were provided by Establishment Department vide its letter No. SO(HRD-II)/ED/1-10/2021(RTI)/Mohammad Arshad-I dated 21.04.2021 (**Annex-XI**). While in the case of PMS Officers, scheduled posts are mentioned in their respective service rules.
12. The appellant had filed departmental representation to the competent authority i.e. Chief Minister, Khyber Pakhtunkhwa through proper channel i.e. through Secretary Establishment Department vide letter dated 22.04.2021 which was received by them through diary No. 2983 dated 23.04.2021 (**Annex-XII**).
13. The honourable Khyber Pakhtunkhwa Services Tribunal has declared the undersigned as entitled to the payment of Executive Allowance for a period from 19.11.2018 to 19.03.2019, the period during which the undersigned remained as OSD (BPS-19), Establishment Department vide its judgement/order dated 09.06.2021, passed in Service Appeal No. 1132/2019, titled Mohammad Arshad-versus-The Government of Khyber Pakhtunkhwa through Chief Secretary & others (**Annex-XIII**).
14. The appellant has requested the Secretary Establishment Department vide letter dated 15.07.2021 to implement the judgement/order dated 09.06.2021 of the honourable Khyber Pakhtunkhwa Services Tribunal, passed in Service Appeal No. 1132/2019, titled Mohammad Arshad-versus-The Government of Khyber Pakhtunkhwa through Chief Secretary & others and also extend its benefit to the appellant in the instant case in light of the legal principle enunciated by the august Supreme Court of Pakistan in Para. 16 (citation C) of its judgement reported as 1996 SCMR 1185, titled, Hameed Akhtar Niazi-versus-The Secretary Establishment Division, Government of Pakistan & others (**Annex-XIV**).

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15. The appellant was transferred and posted from the post of OSD (BPS-20), Establishment Department as Member-I, Board of Revenue (MBR-I-BPS-20) vide Establishment Department notification No. SO(E-I)/E&AD/5-168/2021 dated 19.07.2021 (**Annex-XV**).
16. The appellant has relinquished the charge of the post of OSD (BPS-20), Establishment Department on 19.07.2021 (FN) and assumed the charge of the post of Member-I, Board of Revenue (MBR-I-BPS-20) on 19.07.2021 (FN) (**Annex-XVI**).

### **Grounds of the Case**

17. The appellant feeling aggrieved from the non-payment of Executive Allowance, telephone, POL and newspaper bill from 10.07.2020 and non-allotment of official vehicle till 18.07.2021 and having received no response/decision on the departmental representation, submits the instant appeal on the following grounds amongst others:-
  - i. That, the appellant has not been treated according to law, which is the inalienable right of every citizen, as enshrined in Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. The adverse action against the appellant is also in violation of fundamental right to fair trial and due process guaranteed under Article 10A of the Constitution.
  - ii. That, the second proviso to Section 10 of the Khyber Pakhtunkhwa Province Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) provides that “where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.”
  - iii. That, the OSD post (BPS-20) against which the salary of the appellant has been drawn by the Establishment Department is not the service/cadre post of the appellant because no-where OSD post is included in the category of posts mentioned in the Schedule of Posts appended to the Khyber Pakhtunkhwa Province Provincial Civil Service (Secretariat Group) Rules, 1997.
  - iv. That, the part of the condition No. 5 of the Finance Department notification dated 02.02.2018 i.e. “Executive Allowance will not be admissible to OSD posts” is in violation of second proviso to Section 10 of the Act *ibid*. Therefore, ultra-vires of the basic law, illegal and void ab-initio.

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- v. That, similarly non-allotment of official vehicle, non-payment of POL, telephone and newspaper bill to the appellant since 10.07.2020 is also in violation of second proviso to Section 10 of the Act *ibid*. Therefore, its non-allotment and non-payment is also ultra-vires of the basic law, illegal and void ab-initio.
- vi. That, the non-payment of Executive Allowance to the appellant is a continuous cause of action since 01.11.2020, the day the pay was received for the period from 10.07.2020 to 31.10.2020 in the Monthly Salary Statement for October 2020. The allowance has continuously remained unpaid in November and December 2020, January, February, March, April, May, June and July 2021. Similar is the case of other fringe benefits/charges.
- vii. That, the honourable Federal Service Tribunal has declared in numerous judgments namely 2006 PLC (C.S.) 1124 and 1995 PLC (C.S.) 1026 that in appeals relating to pays and allowances an aggrieved civil servant has a continuing cause of action. Hence, no limitation period under the law is applicable either at department or service tribunal level or any other legal forum.
- viii. That, making the appellant as OSD for such a long period of time is in violation of the judgement/order of the august Supreme Court of Pakistan in Constitutional Petition No. 23/2012, titled Anita Turab-v-Federation of Pakistan and reported as PLD 2013 SC 195. The concerned officers have committed an offence of a contempt of court also.
- ix. That, making the appellant as OSD for such a long period of time is also in violation of the Provincial Government own instructions issued vide Establishment Department letter No. SOR.VI(E&AD)1-4/2005/Vol-II dated 27.02.2013 as a sequel to the above-judgement.
- x. That, junior officers are working against higher posts and some officers hold posts on additional charge but the appellant is denied posting on a scheduled post. The appellant, therefore, suffers a big financial loss without any rhyme or reason and without any trial.
- xi. That, the appellant is entitled to get the benefit of receiving executive allowance for the impugned period in the instant case in light of the legal principle enunciated by the august Supreme Court of Pakistan in Para. 16 (citation C) of its judgement reported as 1996 SCMR 1185, titled, Hameed Akhtar Niazi-versus-The Secretary Establishment Division, Government of Pakistan & others. The principle is reproduced ad verbatim as follows: "We may observe that if the Tribunal or this Court decides a point of law relating to a 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

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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 judgement may 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.”

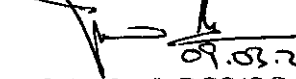
**PRAYER**

Keeping in view the above-mentioned facts and law on the subject, it is, therefore, prayed that:-

- (i) The part of condition of the Finance Department notification dated 02.02.2018 i.e. “Executive Allowance will not be admissible to OSD posts”, has been declared as null and void and the appellant was held entitled to Executive Allowance along with all consequential benefits vide the Khyber Pakhtunkhwa Services Tribunal judgement/order dated 09.06.2021 passed in Service Appeal No. 1132/2019; therefore, the respondents may be directed to make payment to the appellant of un-paid Executive Allowance, residential telephone, newspaper bill and POL cost for the period from 10.07.2020 to 18.07.2021 and 08.03.2022 to 19.12.2022, allotment of official vehicle and other fringe benefits etc. along with cost.
- (ii) The respondents may be directed not to stop all these benefits to the appellant in future.
- (iii) Similarly, any other law/rule/instructions/notification if any is also ultra-vires of second proviso to section 10 of the Civil Servants Act, 1973, therefore, may be declared illegal, null and void and void ab-initio if any.

Dated 09.03.2023


**Appellant-in-Person**

  
09.03.2023

**Mohammad Arshad, PCS(SG-BPS-20),**  
Mailing Address: House No. 11, Provincial Civil  
Officers Colony, Dabgari Gardens (New), Opposite  
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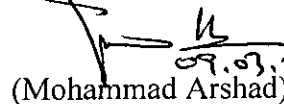
**Affidavit:** It is certified on oath that the contents of the appeal are true to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.

**Deponent**

  
09.03.2023

(Mohammad Arshad)

CERTIFICATE: It is certified that no such other appeal has been filed previously in the instant matter before this tribunal.

  
09.03.2023

(Mohammad Arshad)