

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1200/2019

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Zareef Khan, Ex-Budget & Accounts Officer, R/O Moh: Ghunda Khel,
Village Sheikh Muhammadi, Tehsil and District, Peshawar.
..... (Appellant)

Versus

1. The Secretary, Finance Department, Regulation Wing, Government of
Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Additional Accountant General, AGPR, Sub-Office Fort Road,
Peshawar (Respondents)

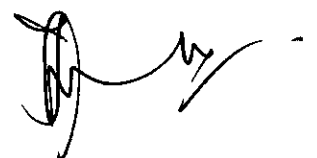
Mr. Ibad-ur-Rehman,
Advocate ... For appellant

Mr. Uzair Azam Khan, ... For respondents
Additional Advocate General

Date of Institution..... 13.09.2019
Date of Hearing..... 02.03.2023
Date of Decision..... 02.03.2023


JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of advance increment w.e.f. 01.07.2007 as well as declaring the recovery as illegal against which departmental appeal was filed on 15.05.2019, which was not replied. It has been prayed that on acceptance of the appeal, withdrawn special advance increment might be given to the appellant w.e.f



01.07.2007 with all consequential reliefs and the recovery made might also be refunded to him.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was inducted in Education Department FATA as Junior Clerk on 01.06.1974 and was gradually promoted to the post of Assistant (BPS-11) on 15.05.1991. Against the 33% quota, he was allowed Selection Grade (BPS-15) with effect from 11.02.2000. Keeping in view the miseries of the lower grade employees, the Provincial Government upgraded different posts in clerical cadre vide notification dated 28.07.2007 and accordingly the post of Assistant was also upgraded from BPS-11 to BPS-14. Vide notification dated 04.01.2009, the competent authority accorded sanction for grant of one Special Increment to the Assistants, Auditors, Senior Clerks and Junior Clerks who were upgraded vide notification dated 28.07.2007. The same orders were given effect from 01.09.2007. Vide letter dated 31.12.2013 of Finance Department, it was further clarified that one special increment was also admissible to the employees who were holding selection grade prior to up-gradation of their post in Basic Pay Scale already held by them. In view of that, the appellant was also granted one Special Advance Increment. Vide another letter of Finance Department dated 31.03.2014 it was clarified that only Junior Clerks and Senior Clerks who were granted Selection Grade, were entitled for grant of one Special Advance Increment whereas the category of the appellant i.e. the Assistant granted selection grade BPS-15 was declared as not entitled for grant of Special Advance Increment. In the meantime, on attaining the age of

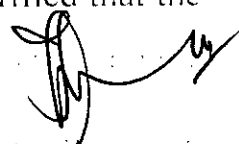


superannuation, the appellant was retired from service on 21.01.2015 and the Accountant General office withdrew the advance special increment from the appellant without bringing the same in his knowledge and also recovery of the paid amount started from his monthly pension. The appellant time and again approached the authorities and filed numerous applications, appeals and representations from time to time but no response was received from them. The appellant at last submitted a proper departmental appeal to the respondents but no response was received despite lapse of statutory period; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, called the act of the respondents as illegal, harsh, arbitrary and without lawful authority. He contended that payment already made could not be recovered from his monthly pension as the same was granted and paid to the appellant after due process, with the approval and sanction of the competent authority. He further argued that there were numerous judgments of the august Supreme Court of Pakistan according to which such deduction was unjustified. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General invited the attention to the letters of Finance Department dated 31.12.2013 and 31.03.2014 and clarified that the



second letter was a continuation of the former letter and it clarified that the increment was meant for those officials who were upgraded from BPS-11 to BS-14, BS- 7 to BS-9 and BS-5 to BS-7, whereas those who were holding selection grade BS-15 were not held entitled to that increment. He further stated that at the time when the pension papers of the appellant were being prepared, the letter dated 31.03.2014 was already in place, but it was not challenged by him, and when it was highlighted that the payment of increment had been made erroneously, recovery was initiated from him. The learned AAG requested for dismissal of the appeal.

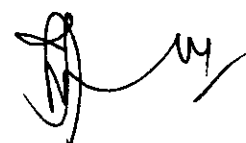
6. From the arguments and record produced before us, it transpires that the appellant, who was Assistant BS-11, was placed in Selection Grade BS-15 in the year 2000. The Provincial Government upgraded the positions of Assistant and Auditor to BS-14, Senior Clerk to BS-9 and Junior Clerk to BS-7 in the year 2007. Later on in 2009, one special advance increment was allowed to the employees in those upgraded positions and the appellant was given the benefit of the same. In December 2013, a clarification was issued by the Finance Department regarding grant of one special advance increment to the employees holding selection grade prior to upgradation of posts in basic pay scale already held by them and the same was allowed to them. Through another letter, within three months of the previous letter, in March 2014, it was further clarified that the said increment was extended only to those officials who were holding Selection Grade prior to upgradation of their posts in BPS, already held by them, just as in the case of same scale promotion. Through that clarification,



Assistants (BS-11) holding selection grade BS-15 were not held entitled to one special advance increment. That clarification came on 31.03.2014. The appellant retired on 20.01.2015 on attaining the age of superannuation. When his pension papers were being prepared, it came to the notice of the Accounts office that he had been given the advance increment, erroneously, in the light of the notification of 2009 because as per clarification of 2014, he was not entitled for it.

7. A point that has been noted here is that the appellant was in service when the clarification letter of 2014 was issued. He could have challenged it at that time, but it was not done. Another opportunity for him to challenge the same was the moment his pension papers were prepared and deduction was made from his pension on account of erroneous payment of the advance increment to which he was not entitled. He did not avail that opportunity also. According to the arguments presented by the learned counsel for the appellant, the appellant submitted various applications and appeals to his competent authority and highlighted the matter of deduction, but no application or appeal is available on the record, except for one departmental appeal which is without signature and date of submission. Moreover there is also no evidence that it has been received in the offices of the Finance Secretary and the Additional Accountant General, AGPR.


8. In the light of above discussion we are of the view that the appellant failed badly to challenge the letter dated 31.03.2014 of Finance Department in



time and hence no relief can be granted to him at this belated stage. The appeal in hand is, hence, dismissed. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 02nd day of March, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)