

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 6348/2020

BEFORE: SALAH-UD-DIN --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Muhammad Aslam, Ex-IEDO, Peshawar.....(*Appellant*)

VERSUS

1. The Secretary Agriculture, Livestock and Cooperative Department, Khyber Pakhtunkhwa Peshawar.
2. The Director General, Agriculture (Extension) Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.

.....(*Respondents*)

Present:-

TAIMUR ALI KHAN,
Advocate

--- For Appellant.

ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

Date of Institution.....21.04.2020

Date of Hearing.....15.06.2023

Date of Decision.....15.06.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of the appeal, the order dated 18.02.2020

may kindly be set aside and the respondents may further be

directed to grant advance/premature increment on promotion

from the post of Agriculture Officer BS-17 to the post of

Agriculture Officer (Supervisory) BS-17 with special pay of

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RS.150/Month for the purpose of pensionary benefits. Any other remedy which this Tribunal deems fit and proper may also be awarded in favour of the appellant. Appropriate, may also be awarded in favour of appellant."

02. Brief facts of the case are that the appellant while serving as Agriculture Officer (BPS-17) was promoted to the post of Agriculture Officer (Supervisory) BPS-17 with special pay of Rs. 150 per month vide Notification dated 18.06.2004. That as per the NWFP Civil Servant Pay Revision Rules, 1978 amended on 29.04.1984, the appellant was entitled to one advance increment which was not allowed to the appellant as he was drawing his salary at the ceiling of BPS-17. That the appellant was entitled to the grant of promotion and increment in light of Finance Department Notification dated 09.07.2005 but the appellant was not granted the same. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 18.02.2020 communicated to the appellant on 12.03.2020 hence the instant service appeal on 21.04.2020

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant argued that when the appellant was promoted from the post of Agriculture Officer (BS-17) to the post of Agriculture Officer (Supervisory) BS-17 he was drawing maximum pay of BS-17 and was therefore, not granted increment. He next argued that in light

of Notification dated July, 9 2005 Basic Pay Scales, Allowances and Pension were revised allowing annual increment in the shape of personal pay to the civil servants who were drawing maximum pay in their respective pay scales. That the appellant was entitled to the 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. That the case of the appellant has not been considered in accordance with the Government Notification, rules on the subject and illegally discarded by the finance Department in a cursory manner. In the last, learned counsel for the appellant contended that similar nature service appeal No. 1633/2020 titled "Ishtiaq Ahmad" has been allowed by this Tribunal which was also upheld by Apex Court and on the basis of that, Notification dated 05.03.2018 has been issued wherein arrears and benefits has been granted to *Ishtiaq Ahmed* and the appellant being similarly placed person is also entitled for same treatment under the principle of consistency.

05. Learned Deputy District Attorney, on the other hand contended that on recommendations of Departmental Promotion Committee, the competent authority promoted the appellant alongwith others from Agriculture Officer (BS-17) to the post of Supervisory Officer (BS-17) with Special Pay of Rs. 150/- per month vide Government of Khyber Pakhtunkhwa, Agriculture Livestock and Coop. Department Notification dated 18.06.2004. That the appellant received the benefits of promotion to the post of Supervisory Officer (BS-17) with Special Pay of Rs. 150/- per month regularly and he was not entitled to receive the benefits of pre-mature increment with effect from 01.07.2005. He next contended that the Finance Department regretted

the appeal of the appellant on the ground that the case is not covered under pay revision rules 2005, as personal pay was not admissible prior to 01.07.2005 vide letter dated 18.02.2020, therefore, the rejection order issued by the Finance Department dated 18.02.2020 was not against norms, law and rules.


06. It is admitted fact that the appellant got promotion to the post of Agriculture Officer (Supervisory) BS-17 with special pay of Rs. 150 per month on 18.06.2004 while notification dated 09.07.2005 was effective from 01.07.2005. It is also not disputed that after 01.07.2005 officers juniors to the appellant were promoted in similar way and they got benefits of the notification dated 09.07.2005 thus creating huge anomaly as juniors to the appellant getting higher salary than the appellant. Record reveal that the appellant remained in service till his superannuation on 02.06.2012 with this anomaly which placed him in a disadvantaged position in the shape of monthly pension after his retirement. The pay revision notification dated 09.07.2005 vide Para-18 established anomaly committee to resolve anomalies arising in implementation of the notification ibid. Ironically nothing is on record to prove that the anomaly which the appellant was facing was ever placed before the committee for scrutiny and redressal. Thus rejection of departmental appeal of the appellant vide letter No. FD (SOSR-1) 2-123/2019 dated 18.02.2020 is unilateral, cursory, arbitrary and without authority. Moreover in a similarly placed case of the same department and cadre this Tribunal has allowed appeal no. 1633/2011 titled Ishtiaq Ahmed Vs. Government of Khyber Pakhtunkhwa through Secretary Finance

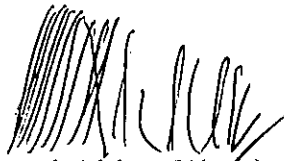
department and others vide judgment dated 23.01.2017 upheld by Supreme Court of Pakistan vide Civil Petition No. 334-P of 2017 dated 23.11.2017.

07. In view of foregoing discussion we are constrained to set aside the order bearing No. FD (SOSR-1) 2-123/2019 dated 18.02.2020 and allow the instant appeal and hold that the case of the appellant for the purpose of fixation of his pay till his superannuation including pensionary benefits be considered with effect from 01.07.2005 as if he was promoted on that date. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 15th day of June, 2023.*

RECORDED
Peshawar


(Salah-Ud-Din)
Member (J)


(Muhammad Akbar Khan)
Member (E)