

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 360/2023

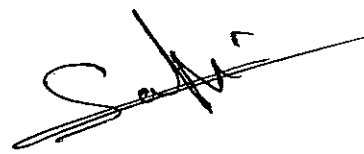
**Jamil Ahmad Qureshi, Assistant Director Labour, (Litigation) (BPS-17) Directorate of Labour 3rd Floor, FC Trust Building, Sunehri Masjid Road, Peshawar Cantt Pakhtunkhwa
.....Appellant.**

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary Finance Government of Khyber Pakhtunkhwa Civil Secretariate Peshawar.
3. Secretary Law Government of Khyber Pakhtunkhwa Civil Secretariate Peshawar.
4. Secretary Labour Government of Khyber Pakhtunkhwa Civil Secretariate Peshawar.
5. Director, Labour Directorate of Labour Khyber Pakhtunkhwa, 3rd floor FC Trust Building Sunehri Masjid Road, Peshawar.....**Respondents**

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5. Director, Labour Directorate of Labour Khyber Pakhtunkhwa, 3rd floor FC Trust Building Sunehri Masjid Road, Peshawar.....**Respondents**

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 to 5.

Respectfully Sheweth that the respondent submits as under.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 8125

Dated 05/10/23

Preliminary Objections:

1. That the Appellant has got no cause of action.
2. That Appellant has got no locus-standi to institute the present Service Appeal.
3. That, the Appeal of the Appellant is not maintainable in its present form.
4. That, the Appellant has been estopped by his own conduct to file the instant Appeal.
5. That, the Appeal of the Appellant is bad for non-joinder and mis-joinder of parties.
6. That, Appellant has not come to the Court with clean hands and has suppressed material facts from this Honourable Tribunal.
7. That, Appeal of the Appellant is time barred.

ON FACTS:


1. Correct to the extent that Government of Khyber Pakhtunkhwa in Finance Department vide Notification dated 02.02.2018 sanctioned Executive Allowance to the tune of 1.5 initial Basic Pay per month on the Pay Scale 2017 to PAS, PCS & PMS officer but against the schedule posts of E&A Department with some conditions mentioned in the above cited Notification. Later in in supersession of all the above Notification, the Provincial Government vide Notification dated 07.07.2021 granted Executive Allowance to all Officer of PAS, PMS & PCS w.e.f 01.07.2021 @150% of the running basic pay (**Annex-A**). The appellant is Assistant Director in the Directorate of Labour and not PAS, PMS or PCS Officer.

2. Provincial Government of Khyber Pakhtunkhwa sanctioned Secretariat Performance Allowance @ 30% & 50% of the Basic Pay Scales to all the Government Servants working in the Governor / Civil chief Minister's Secretariats vide Notifications dated 27-04-2011 & 27.11.2019 (**Annex-B**). The officers / officials of Directorate of Labour Khyber Pakhtunkhwa submitted

Sub

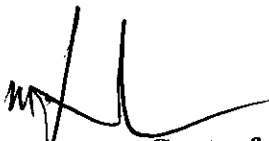
appeal to the Competent Authority narrating with the plea that since the Provincial Government sanctioned Executive Allowance / Secretariat Allowance etc. to Secretariat employees while they are ignored and could not be benefited. The petitioners filed Writ Petition before Peshawar High Court to the effect that employees of Labour Directorate are deprived from specific / special departmental allowance and the Peshawar High Court vide Order dated 31-05-2022 directed that the matter may be submitted to the respondents to decide the case as departmental representation of the petitioners in accordance with law through speaking order which was issued on 30-12-2022 (Annex-C). 2

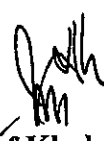
ON GROUNDS:

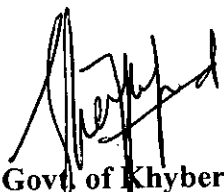
- A. Para-A pertains to record, however the appellant is Assistant Director in the Directorate of Labour he is neither working on scheduled post of Establishment and Administration Department nor performing duty being executive nature
 - B. Government of Khyber Pakhtunkhwa in Finance Department vide Notification dated 02-02-2018 sanctioned Executive Allowance to the tune of 1.5 initial Basic Pay per month on the Pay Scale 2017 to PAS, PCS & PMS officers but against the schedule posts of E&A Department with some conditions mentioned in the above cited notifications. Later on in supersession of all the above notification, the Provincial Government vide Notification dated 07-07-2021 granted Executive Allowance to all officers of PAS, PMS & PCS w.e.f 01-07-2021 @150% of the running basic pay (Annex-C). The appellant is Assistant Director in the Directorate of Labour, he is neither working on scheduled post of Establishment and Administration Department nor performing duty being executive nature, therefore not entitled to Executive Allowance.
 - C. Incorrect. There is difference in the nature of work of secretariat employees and attached departments employees. The Secretariat employees worked under pressure and sometimes worked beyond office hours. But it is not so in the case of attached department employees.
 - D. As nature of work is different, therefore no case of discrimination arises.
 - E. Incorrect already explained in the para's above.
 - F. Pertains to record.
 - G. Incorrect. No discrimination has been done against the petitioner.
 - H. Incorrect.
 - I. Denied, the appellant has been treated equally alongwith other employees of attached department according to their nature of work.
 - J. No comments.
 - K. Incorrect.
 - L. Incorrect.
 - M. Incorrect.
 - N. Incorrect. The Provincial Government of Khyber Pakhtunkhwa has compensated its employees fairly.
 - O. As already explained in the above para's the appellant is not entitled for the allowance.
 - P. Incorrect. The speaking order is issued in well-reasoned and based on facts.
 - Q. Denied.
 - R. That other grounds will be raised during the course of arguments.
- 


Prayer:

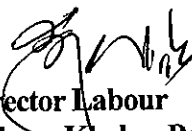
The officer of Directorate of Labour is not covered under the provision of Finance Department's Notification *ibid*, hence, the prayer of the appellant in the above service appeal is devoid of merit, therefore regretted not being worthy of consideration in light of Notifications *ibid*, it is therefore most humbly prayed that the appeal being devoid of merit may be dismissed, please.

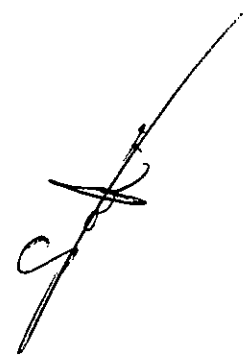

For Chief Secretary to Govt. of
Khyber Pakhtunkhwa
(Respondent No. 1)


Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department
(Respondent No. 2)


Secretary to Govt. of Khyber Pakhtunkhwa
Law Department
(Respondent No. 3)


Secretary to Govt. of Khyber Pakhtunkhwa
Labour Department
(Respondent No. 4)


Director Labour
Directorate of Labour Khyber Pakhtunkhwa
(Respondent No. 5)





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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(Regulation Wing)

Dated Peshawar, April 27, 2011

NOTIFICATION

No. FD(SOSR-II)8-7/2011. Governor, Khyber Pakhtunkhwa Province has been pleased to approve, with effect from 07-04-2011 and until further orders, *Increase* in the rate of *Special Allowance*, sanctioned vide this Department letter No. FD(SOSR-II)8-7/2002/Vol. IV dated 06-02-2008, and subsequently amended vide letter of even number dated 03-03-2008, from the existing 20% of the Basic Pay to 30% of the Basic Pay.

2- Special Allowance shall cease to be admissible to the civil servant with effect from the date when, consequent upon his transfer to a post outside Civil Secretariat, Chief Minister's Secretariat or Governor's House Secretariat, he relinquishes the charge of the post held by him in any of these Secretariats.


3- The admissibility of Special Allowance shall continue to be subject to the conditions prescribed in Finance Department letters referred to in Para-1 above, or conditions which may be prescribed by the Government from time to time.

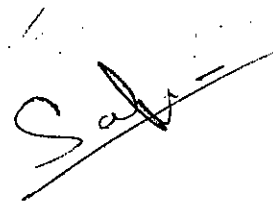
Secretary to Government of
Khyber Pakhtunkhwa
Finance Department

Endst: No. & date even.

Copy is forwarded for information and necessary action to the:-

1. All Administrative Secretaries of Khyber Pakhtunkhwa Province.
2. Accountant General Khyber Pakhtunkhwa, Province.
3. Secretary to Governor, Khyber Pakhtunkhwa Province.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa Province.
5. Director FMIU, Finance Department, Khyber Pakhtunkhwa Province.


(WAZIR MUHAMMAD AFGAR)
Section Officer (SR.II)





GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 27/11/2019

NOTIFICATION

No.FD(SOSR-II)8-7/2019. In partial modification of this department letter No.FD/SO (SR-II)/8-7/2011 dated 27.04.2011, the Government of Khyber Pakhtunkhwa has been pleased to extend the Special / Secretariat Allowance from 30% to 50% w.e.f 01.07.2020 or earlier in case sufficient resources are available with Finance Department and to redesignate the same as "Secretariat Performance Allowance". However, the aforementioned increase will not be applicable to all those who are drawing Scheduled Posts Allowance/Technical Allowance/Planning Allowance/Health Professional Allowance or any other allowance having high quantum of financial benefits.

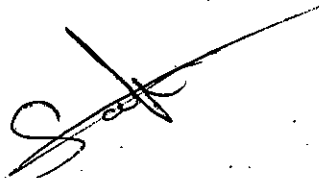
Secretary to Govt of Khyber Pakhtunkhwa
Finance Department

Endst: No. & Date Even.

Copy is forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. All Administrative Secretaries, Khyber Pakhtunkhwa.
5. Director, FMIU, Finance Department, Khyber Pakhtunkhwa.
6. PSO to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Minister Finance, Khyber Pakhtunkhwa.
8. PS to Secretary, Finance Department, Khyber Pakhtunkhwa.
9. PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
10. PA to Additional Secretary (Regulation), Finance Department.


SECTION OFFICER (SR-II)
FINANCE DEPARTMENT





GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Secy. Labr.
D. No. 51
Dated. 12-01-2023

Peshawar, Dated the 30th December, 2022

SPEAKING ORDER

No. SO (SR-IV)/FD/1-32/Allowance/2022

WHEREAS, the Provincial Government of Khyber Pakhtunkhwa sanctioned Secretariat Performance Allowance @ 30% & 50% of the Basic Pay Scales to all the Government Servants working in the Governor/ Civil /Chief Minister's Secretariat (Annex-I).

AND whereas, officers/officials of Directorate of Labor Khyber Pakhtunkhwa submitted appeal to the Competent Authority narrating with the plea that since the Provincial Government sanctioned Executive Allowance/Secretariat Allowance etc to Secretariat employees while they are ignored and could not be benefited.

AND whereas, the petitioners filed WP before Peshawar High Court to the effect that employees of Labor Directorate are deprived from specific/special departmental allowance.

AND whereas, the Peshawar High Court vide Order dated 31-05-2022 directed that the matter may be submitted to the respondents to decide the case as departmental representation of the petitioners in accordance with law through speaking order.

Being employees of the attached formation of Labor Department, they are not entitled for Secretariat Performance Allowance. Hence, the prayer of the petitioner in the WP is devoid of merit, therefore regretted not being worthy of consideration in light of notification ibid Annex-I.

AS/DS/L

(IKRAM ULLAH KHAN)
Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

Endst: No & date even

Copy forwarded to the:-

1. The Secretary to Government of Khyber Pakhtunkhwa Labor Department
2. The Registrar, Peshawar High Court Peshawar.
3. PS to Special Secretary (R&A) Finance Department.
4. PA to Additional Secretary Finance (Regulation).
5. PA to Deputy Secretary (Reg-I) Finance Department.
6. Master File.

*SO (B&A) ✓
SO (Lit.)*

*205/2
13/01/2023*

SECTION OFFICER (SR. IV)



GOVERNMENT
FINANCE
(REGULATION WING)

HYBER PAKHTUNKHWA
DEPARTMENT

7

NOTIFICATION

Dated Peshawar the: 07-07-2021

No. FD(SOSR-II)2-5/2021-22 (Executive Allow) In supersession of this Department Notification No. FD(SOSR-II)8-7/2016-17 dated 02.02.2018 and Notification No. FD(SOSR-II)8-7/2019, dated 25-07-2019, the Government of Khyber Pakhtunkhwa has been pleased to grant the Executive Allowance to all officers of PAS, PCS, PMS serving under the Government of Khyber Pakhtunkhwa irrespective of whether they are posted against scheduled posts or not, at the rate of 150% of Running Basic Pay per Month with effect from 01.07.2021. Furthermore, Executive Allowance at the rate of 150% of Running Basic Pay shall also be admissible to all officers posted against scheduled posts in the province irrespective of their service cadre. However, 20% of the difference between the running basic pay and the initial basic pay will be deducted as part of "pay as you go" pension contribution and shall be deposited under Object Head C02241-Contribution of Pension & Gratuities in Provincial Account-I (Non-Food).

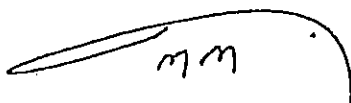
2. The above allowance will be admissible subject to the following conditions:
- It will be subject to Income Tax.
 - It will not be counted towards pension and gratuity.
 - It will not be admissible in any kind of leave (except casual leave) as well as posting against OSD and Leave Reserve Posts.
 - Those Officers who are posted against other posts and are in receipt of cadre allowance other than regular allowances shall only be entitled to one of the allowances, whichever is more beneficial.


Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department

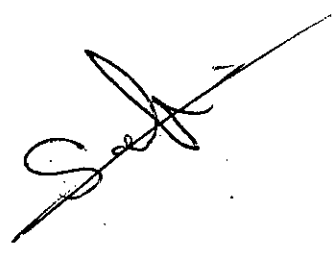
Endst: No. & Date even.

A copy of the above is forwarded for information & necessary action to the:

- The Accountant General, Khyber Pakhtunkhwa.
- The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- The Principal Secretary to Governor, Khyber Pakhtunkhwa.
- All Administrative Secretaries to government of Khyber Pakhtunkhwa.
- All the Divisional Commissioners in Khyber Pakhtunkhwa.
- All Deputy Commissioners in Khyber Pakhtunkhwa.
- All the District Accounts Officers in Khyber Pakhtunkhwa.
- The Director-FMIU, Finance Deptt. with the request to upload the same on FD's Website.
- PSO to Chief Secretary, Khyber Pakhtunkhwa.
- All Section Officers/Budget Officers in Finance Dept. Khyber Pakhtunkhwa.
- The Manager, Government printing Press, Peshawar.
- The Private Secretary to Secretary, Finance Deptt. Khyber Pakhtunkhwa.
- PA to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
- PAs to Addl. Secretaries/Deputy Secretaries in Finance Dept., Peshawar.
- Master File.


(Muhammad Ilyas Khattak)
Section Officer (SR: II)

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 360/2023

Jamil Ahmad Qureshi, Assistant Director Labour, (Litigation) (BPS-17) Directorate of Labour 3rd Floor, FC Trust Building, Sunehri Masjid Road, Peshawar Cantt Pakhtunkhwa
.....**Appellant.**

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary Finance Government of Khyber Pakhtunkhwa Civil Secretariat Peshawar.
3. Secretary Law Government of Khyber Pakhtunkhwa Civil Secretariat Peshawar.
4. Secretary Labour Government of Khyber Pakhtunkhwa Civil Secretariat Peshawar.
5. Director, Labour Directorate of Labour Khyber Pakhtunkhwa, 3rd floor FC Trust Building Sunehri Masjid Road, Peshawar.....**Respondents**

AFFIDAVIT

I, Safiullah, Superintendent BS-17, Litigation Section, Labour Department, on behalf of Respondent No. 1-5, do hereby on oath affirm and declare that the contents of the Comments / Para-wise Reply are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honorable Tribunal.



Deponent.
CNIC: 17101-0397298-5
Mobile No: 0343-9002374

Identified by:

A. Advocate General,
Khyber Pakhtunkhwa



GOVERNMENT OF KHYBER PAKHTUNKHWA
LABOUR DEPARTMENT

AUTHORITY LETTER

Mr. Safiullah, Superintendent, Litigation Section, Government of Khyber Pakhtunkhwa, Labour Department is hereby authorized to submit para-wise comments before the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in connection with Service Appeal No. 360/2023, Jamil Ahmad Qureshi V/S Govt. of Khyber Pakhtunkhwa through Chief Secretary and others on behalf of Respondents No. 1 to 5.

M. J. 2/10/2023

Secretary to Govt. of Khyber Pakhtunkhwa
Labour Department