

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 930/2015

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

Dr. Syed Luqman Ahmad Shah, Director (Rtd), BPS-20, Provincial Health Services Academy, Peshawar. R/O House No. 87 Street-5 Sector J-3 Phase-II, Hayatabad, Peshawar. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Health Department, Civil Secretariat Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Finance, Civil Secretariat, Peshawar.
4. Accountant General Khyber Pakhtunkhwa Peshawar.
..... (Respondents)

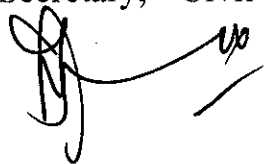
Mr. Yasir Saleem,
Advocate ... For appellants

Mr. Muhammad Jan,
District Attorney ... For respondents

Date of Institution..... 04.08.2015
Date of Hearing..... 18.09.2023
Date of Decision..... 18.09.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected Service Appeal No. 931/2015, titled “Dr. Abdul Latif Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others”, Service Appeal No. 932/2015 titled “Dr. Anees Akhtar Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others”, Service Appeal No. 933/2015 titled “Dr. Muhammad Iqbal Afridi Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil



Secretariat, Peshawar and others”, and Service Appeal No. 934/2015 titled “Dr. Muhammad Zafar Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others” as in all the appeals common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the discriminatory treatment of the respondents by not allowing the Orderly Allowance to the appellant as was allowed to other civil servants/similarly placed employees i.e. officers in BPS- 20 and above, for the grant of which the departmental appeal of the appellant dated 06.04.2015 was not responded despite the lapse of 90 days statutory period. It has been prayed that on acceptance of the appeal, the respondents might be directed to treat the appellant at par with other similarly placed employees and to allow him Orderly Allowance from the date when it has been allowed to other similarly placed employees i.e. officers serving in BPS- 20 and above with all back wages and benefits.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was the employee of Health Department of the Provincial Government and was a civil servant within the meaning of law. During the course of his service, he was promoted to BPS-20 vide notification dated 10.02.2011 and while serving as Director BPS-20, at Provincial Health Services Academy, Peshawar, he stood retired w.e.f. 31.05.2011, on attaining the age of superannuation. Federal/Provincial departments/autonomous bodies like Civil Secretariat, WAPDA, Peshawar University, Sind Government and Pak Army were allowing the Orderly Allowance to their employees in BPS- 20



and above. Similarly the Provincial Government through its notification dated 17.09.2003 had allowed the same in favour of the officers in BPS 20, 21 and 22 but only to those who were working in the Civil Secretariat. The same was further extended to those officers of the secretariat working in BPS- 20 and above on their temporary transfer from the secretariat vide order dated 18.02.2006. The allowance was also enhanced/revised from time to time by the Federal and Provincial Governments vide orders dated 04.05.2004, 26.02.2008, 16.07.2012, 09.08.2012 and 26.12.2012. The Government of Pakistan, Ministry of Finance Division vide letter dated 24.12.2012 clarified that all officers in BPS- 20 and above were entitled to draw Orderly Allowance on the orders of the august Supreme Court of Pakistan. The Government of Khyber Pakhtunkhwa, Finance Department vide letter dated 12.12.2013 in pursuance of order of Federal Government, allowed the same facility/orderly allowance to the serving officers w.e.f. 01.01.2013 or the date of his retirement whichever was later with the proviso that whenever the Government revised the rate of Orderly Allowance in future, the same increase should be made applicable to the special additional pension of the retired officers and restricted it only to a special category of civil servants i.e APUG/PCS (Executive) and PCS Secretariat. The appellant and his colleagues, despite being similarly placed employees serving/served in BPS- 20 and above, and discriminated in terms of not allowing the Orderly Allowance, filed a Writ Petition No. 3900-P/2014, in the Honourable Peshawar High Court Peshawar, however the writ petition was dismissed in *limine* due to lack of jurisdiction with direction to the appellant to approach proper forum for the redressal of his grievance vide judgment and order dated 24.02.2015. The appellant filed departmental appeal



dated 06.04.2015 which was not responded despite lapse of 90 days; hence the instant service appeal.

4. Respondents were put on notice. They submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, contended that the conduct of the respondents was highly deplorable, amount to discrimination and denial of the concept of equality before the law and equal protection of law as enunciated under Articles 4, 8 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He argued that it was consistently held by the august Superior Courts that similarly placed employees be treated similarly without any discrimination. He contended that since the appellant was a civil servant, who served in BPS- 20, therefore he deserved to be treated alike with his counterparts i.e. other civil servants of the province serving in BPS- 20 and be allowed the Orderly Allowance. He requested that the appeal might be accepted as prayed for.

6. Learned District Attorney, while rebutting the arguments of the learned counsel for the appellant, argued that the orderly allowance was admissible only to the officers working in BPS- 20 and above in the Civil Secretariat, granted by the competent authority, whose duties and responsibilities were of an immense magnitude as they were responsible for policy making and monitoring the work of all the departments of the Provincial Government. The learned District Attorney informed that the duties of employees working in



Secretariat & attached Departments were analyzed in a detailed report submitted by a high level Committee under the chairmanship of Additional Chief Secretary, constituted in compliance with the order of Hon'ble Peshawar High Court in respect of some allowances claimed by various employees of attached departments, and its findings regarding ineligibility of attached Departments employees to the benefits allowed to the Secretariat employees were extremely clear and approved by the honourable Peshawar Court. Appellant, being a medical doctor by profession, was entitled to allowances which were not permissible to other service groups. The learned District Attorney further argued that the appellant despite being a civil servant was exempted from Rule 16 of the Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987 and being a medical doctor was entitled for private practice. Learned District Attorney requested that the appeal might be dismissed.


7. From the arguments and record presented before us, it transpires that the appellant is a BS-20 officer who served the Government of Khyber Pakhtunkhwa as Doctor and retired from service as Director, Provincial Health Services Academy, Peshawar on 31.05.2011. It has been prayed in the instant service appeal that he may be allowed Orderly Allowance on the same analogy as was allowed to the similarly placed employees serving in BS-20 and above and in that regard he has presented the example of officers in BS 20 and above working in the civil secretariat, who are in receipt of the Orderly Allowance. Record presented before us shows that Orderly Allowance was allowed to the officers in BS- 20, 21 and 22 working in the Provincial Civil Secretariat vide a

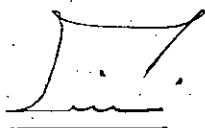


letter of Finance Department dated 17.09.2003. Rate of this allowance is enhanced from time to time whenever the Federal Government revises the same. The appellant, in his appeal, has provided some letters according to which orderly allowance has been allowed to the officers of armed forces and WAPDA by their respective agencies. In those cases, we are of the view that they are Federal agencies and have no comparison with the provincial government. In case of the government of Khyber Pakhtunkhwa, Orderly Allowance has been allowed specifically to the officers in BS-20 and above serving in the Civil Secretariat only. It is also an established fact that there are certain allowances which are specific to certain positions, for example, if we take into consideration the Health Allowance, it is admissible only to the employees in the health sector. In case of the present appellant, who is a doctor by profession, despite the fact that he is a civil servant, he is allowed for private practice thus exempting him from rule 16 of the Khyber Pakhtunkhwa Government Servants (Conduct) Rules, 1987.

8. In view of the above discussion, the instant appeal as well as connected appeals are dismissed, being groundless. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th of September, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S

S.A 930/2015

18th Sept. 2023 01. Mr. Yasir Saleem, Advocate for the appellant present. Mr.


Muhammad Jan, District Attorney for the respondents present.

Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, instant appeal is dismissed, being groundless. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of September, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S