KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1435/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Sufyan Haqqani, (Director Peshawar Region), Excise, Taxation & Narcotics Control Department Khyber Pakhtunkhwa, Peshawar.
.... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat Peshawar.
3. The Excise and Taxation & Narcotics Control Department, Government of Khyber Pakhtunkhwa Peshawar.
4. Director General Excise, Taxation & Narcotics Control Department.
.... (*Respondents*)

Mr. Gohar Ali Durani
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....15.06.2020
Date of Hearing.....15.11.2023
Date of Decision.....15.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayers copied as below:

"Declare that the actions of the respondents dated 15.08.2022 by virtue of which the Finance Department regretted the representation of appellants despite the favorable comments of the Excise Department to be

arbitrary, illegal, unlawful and without any jurisdiction."

"Declare further that the discontinuation of the Executive allowance 150% to be illegal, unlawful and without any authority vested in the Finance department"

"Declare that the recoveries affected from the appellants to be illegal and unlawful and without any jurisdiction"

"Direct that the Executive Allowance 150% be continued to the appellants forthwith with all arrears and retrain the department from taking any further arbitrary decisions against the appellants"

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (1) Service Appeal No. 1436/2022 titled "Sufian Haqqani Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others"(2) Service Appeal No. 1437/2022 titled "Sufian Haqqani Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (3) Service Appeal No. 1438/2022 titled "Dr. Eid Badshad Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (4) Service Appeal No. 1439/2022 titled "Faisal Khurshid Burki Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (5) Service Appeal No. 1440/2022 titled "Said Ul Amin Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (6) Service Appeal No. 1441/2022 titled "Saim Jhangra Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (7) Service Appeal No. 1442/2022 titled "Masaud Ul Haq Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (8) Service Appeal No. 1443/2022 titled "Fawad Iqbal Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (9) Service Appeal No. 1444/2022 titled "Fazal Ghafoor Vs

.Government of Khyber Pakhtunkhwa through Chief Secretary and others" (10) Service Appeal No. 1445/2022 titled "Tariq Mehsud Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (11) Service Appeal No. 1446/2022 titled "Salah Ud Din Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (12) Service Appeal No. 1447/2022 titled "Javed Khilji Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (13) Service Appeal No. 1448/2022 titled "Andaleep Naz Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (14) Service Appeal No. 1449/2022 titled "Rehman Uddin Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (15) Service Appeal No. 1450/2022 titled "Imad Uddin Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" as in all these appeals common questions of law and facts are involved.

3. Brief facts of the case, as given in the memoranda of appeal are that the appellant applied to the post of in light of advertisement issued by Public Service Commission. Appellants meet the criteria of competitive examination, interview and psychological evaluation like PMS & PAS officer and thereafter also complete training like them spread upon period of eight months. That appellants were allowed executive allowance by the government like other PMS Officers but same was stopped by respondents which was not in accordance with law and rules on the subject. It is contention of the appellant that they were not treated in accordance with law; appellant are also Public Service Commission qualified officers; who were appointed upon recommendation of Public Service Commission after going through the standard set by the Public Service Commission like PAS & PMS

officers to whom executive allowance was given by the government. They contended that appellants had never applied for the executive allowance but when the same was given/allowed to them so that created rights in favour of the appellants and now asking for recovery from the appellants by the Finance Department was unjustified. They also contended that appellant were revenue generating agency and contributed to the Government exchequer, therefore, they ere entitled for the same which were unlawfully stopped/from him. Appellants applied to the authority who turned down their request, hence, the instant service appeal.

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

5. Learned counsel for the appellant argued that appellant had not been treated in accordance with law and rules. Article 4, 9, 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 were being violated by the respondent department in taking away the due right of executive allowance from the appellants, while extended to others. He further argued that the vested rights of the appellants were created, as it was allowed to the appellant by respondents at their own, which could not be done away with, due to the whims and wishes of anyone as per principle of *locus poenitentiae*, the recovery and non-continuation of the allowance were both illegal and unlawful and could not be allowed to proceed. He further contended that Finance Department Notification dated 07.07.2021 was in clear and unequivocal terms, entitlement to all PCS/PMS officers working in the Government of Khyber Pakhtunkhwa without any differentiation whether they were from PCS Executive, PCS Police, PCS

Secretariat or PCS Excise. He further argued that appellants were Public Service Commission qualified officer who had passed the exam with same syllabus and gone through eight weeks training like PCS executive therefore, they were rightly given earlier this allowance and requested for its continuation.

6. Conversely, learned Deputy District Attorney for the respondents contended that Establishment and Excise Department are two different departments having different cadre and set of rules, standard of induction, method of recruitment and promotion. He further contended that Excise department is governed by its own set of rules 2018 and PMS runs under 2007 rules and its parent department Establishment& Administration Department having different nomenclature, schedule, promotion, training and induction method. If directorate of Excise, Taxation has not its own syllabus of training Module, then they should frame its own syllabus & Training Module. He further submitted appellants are not covered under the provision of Finance Department notification dated 15.08.2022 Excise Directorate are not covered under the provision of the Department's notification as they are neither PAS, PCS, PMS Officers nor posted against the scheduled posts but are inducted through Khyber Pakhtunkhwa Public Service Commission as ETOs.

7. Perusal of record reveals that appellants are the employees of Excise, Taxation and Narcotics Control Department, who were duly appointed as their posts were advertised by the Public Service Commission in the light of which they applied for it and appeared in the competitive examinations, interview and after psychological evaluation they were appointed, who were later on promoted as Director. The service structure of various departments of the Khyber Pakhtunkhwa, including the appellant and PMS Officers is governed and regulated by the Khyber Pakhtunkhwa Civil Servant Act, 1973 and appellant also went through the same process of recruitment in BPS-17

like PMS officers in accordance with PMS Rules 2007 i.e advertisement, syllabus, examination, interview, psychological evaluation and even training are the same. Rule-2(h) of the Rules of Business 1985 defines Department as a self-contained Administrative Unit in the Secretariat responsible for the conduct of business of the Government in a distinct and specified sphere and is declared as such by the Government. Similarly, the Attached Department has also been defined under Rule-2(b) of the Rules of Business as:

A Department mentioned in the Column-3 of the Schedule-I. The Schedule-I tabulates the Administrative Departments, Attached Departments and Heads of the Attached Departments.

Rule-3(3) read with Schedule-II of the Rules of Business, provides for the distribution of business of the Provincial Government amongst the Departments. Provincial Government through Finance Department sanctioned various allowances i.e Executive/Performance/Technical/Professional Allowance for various cadres. Similarly Finance Department, through notification dated 02.02.2018, allowed executive allowance at the rate of 1.5 of initial basic pay per month to the PAS/PCS/PMS officers in BPS-17 to BPS-21 working on scheduled post of the Establishment and Administration Department vide other notification dated 02.08.2018 scheduled post allowance was allowed to Police Officers of the Police Department to Officer of BPS-17 to BPS-21 at the rate of 1.5 initial basic pay per month. Finance department, through yet another notification dated 19.10.2018, allowed technical allowance to the Engineers serving in only four department in BPS-17 to BPS-21 @1.5 of initial basic pay. Similarly vide notification dated 11.11.2019 the planning cadre officer BPS-17 to BPS-20 were allowed planning performance allowance at a same rate and doctors are also allowed of Health professional allowance at the rate of 150% to PAS, PCS, PMS officers. The appellants

being Public Service Commission qualified officers were started payments of the allowance without any request by the appellant for it. This allowance was given to the appellants till April, 2022 and thereafter it was stopped in May, 2022 upon which appellants filed departmental representation to respondent on 01.06.2022. Although Administrative Department in their comments upon representation of appellant to the Finance Department fully endorsed the appellant's plea and recommended for continuation of allowance but the Finance Department, vide order dated 15.08.2022 regretted representation of the appellant and also ordered for recovery of the amount paid to appellants. It is alleged by the appellants that regretal of appellant's representation by the Finance Department caused disparity and it was discrimination with the appellants. Recovery of the paid amount from the appellants was against the law as appellants never applied for that and it was stated to them by the department itself, which was termed by the Finance Department as irregularity. Appellant alleged that they were not treated in accordance with law.

8. Main contention of the appellants is that they are entitled for executive allowance at the rate of 1.5% of initial basic pay because they entered into service after going through the same procedure, method of recruitment, through which PMS, PCS and PAS officers are recruited i.e advertisement by the Public Service Commission of the post, competitive written examination in eight similar subjects rather in same subjects/syllabus, psychological evaluation and interviews followed by same training modules of eight months. Appellants exam were conducted under PMS Rules 2007. The other contention is that they were discriminated and were not equally treated as almost all the cadre/department/employees and officer were allowed allowance but the appellants are deprived from it, which created disparity and injustice.

9. Scheduled post by the government is one which is specifically mentioned

in scheduled appended with provision PMS Rules 2007. The post of the appellants are not mentioned in it and appellants are working under Excise Department which is a different department than Establishment Department.

10. It is evident on record that employees of almost all the departments were allowed allowances at the rate of 1.5% of their basic pay and appellants were deprived from it, despite the fact that they are revenue generating agency and contributed to government exchange with their efforts. Therefore, they will have to be treated at par with the employees of other departments. Hence, they may also be given the same treatment and allowed any allowance, which the Finance Department deems appropriate to name it.

11. As a sequel to above discussion, we are unison to dispose of this appeal as well as connected service appeals on the above terms. Cost shall follow the events. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this15th day of November, 2023.*

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah