

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT SWAT

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

Service Appeal No.1318/2018

Date of presentation of Appeal.....17.10.2018
Date of Hearing.....04.12.2023
Date of Decision.....04.12.2023

Iqbal Jehan S/o Talimand R/o Shahdara, Watkay Mingora, Tehsil Babuzai, District Swat.....*Appellant*

Versus

1. Secretary of Khyber Pakhtunkhwa Finance Department, Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. District Accounts Officer Swat.....(*Respondents*)

Present:

UMER FAROOQ,
Advocate

---- For appellant

MUHAMMAD JAN,
District Attorney

---- For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):- Brief facts of the case are that the appellant was initially appointed as Certified Teacher (CT) in the Education Department in the year 1982. After passing the B.Ed Examination, the appellant was promoted to SET in the year 1987; that the appellant has obtained higher qualification by passing the M.Ed Exam on 25.01.2000. The Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar has given sanction of three advance increments on 01.07.2000 from the date of passing M.Ed exam; that the District Accounts Officer, Swat, issued pay slip in which the

appellant was awarded three advance increments, by getting one increment the pay of the appellant reached the maximum of the pay scale Rs. 5490/- and the remaining two increments were awarded as a personal pay. That the appellant was not given the annual increment of the year 2001, on the basis of reaching the maximum of the pay scale (BPS-16); that the appellant requested to the District Accounts Officer Swat for fixation of his pay in the revised pay scale and the two increments awarded as personal pay; that the District Accounts Officer, Swat informed the appellant that these increments will be fixed in the pay after allowing move over from BPS-16 to BPS-17; that the District Accounts Officer, Swat has drawn back the advance increments as awarded to the appellant in his personal pay in 2003 without showing any reason. After promotion to the BPS-17 the District Accounts, Officer, Swat issued a new pay slip to the appellant without the said increments. The appellant applied to District Accounts Officer, Swat for the said increments on 11.04.2009 which was replied under Endst No. DAO, Swat/PE/PR-1-1-1230 dated 12.11.2009 that the said increments are not allowed to the Teaching Cadre under the letter of A.G NWFP Peshawar No.H-24/Swat-Tank/Vol-1/135 dated 24.07.2001 and Finance Department letter No.FD (SR-1) 2-123/2002 dated 08.02.2002. Feeling aggrieved, the appellant filed Writ Petition No. 661-P/2010 in the Peshawar High Court, Mingora Bench (Dar-Ul-Qaza), Swat, which was transmitted to this Tribunal for adjudication vide order dated 09.10.2010.

02. 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 District

Attorney for the respondents and have gone through the record with their valuable assistance.

03. Learned counsel for the appellant contended that the reply of respondent No. 3 dated 12.11.2009 is wrong, against the law rules and justice. He further contended that when once any benefits are given than the respondents have no power to withdraw these benefits from the appellant; that the appellant have the right to receive the increments in view of the higher qualification and experience; that the appellant have the rights to fix the salary in the increased stages; that no discrimination should be made in the administrative cadre and the teaching cadre.

04. Learned District Attorney on the other hand contended that the appellant obtained higher qualification of M.Ed from Karachi University in the year 1999 and result was declared on 22.02.2000; that two advance increments were awarded to the appellant as personal pay but that was against the prevailing rules and policy as advance increment in the shape of personal pay was not allowed to teaching cadre as per Finance Department Circular letter dated 11.08.1991. That there is no provision in rules regarding grant of advance increment as personal pay to teaching cadres; that the reply of District Accounts Officer, Swat is correct and according to rules/regulation because the DAO,s are bound to keep the provincial exchequer in a proper manner and nobody is allowed to use the public exchequer according to one's own sweet will or in disregard of rules/regulations necessary to avoid the public exchequer from losses.

05. Perusal of record reveals that the appellant was awarded three advance increments on the basis of his higher qualification i.e. M.Ed degree in the year 2000 by the District Accounts Officer Swat. Later on in the year 2001 the said

increments were adjusted upon promotion/move over of the appellant to BS-17 given the fact that the advance increment were given to the appellant wrongly as he was not entitled to the same. As per policy circular issued by the Finance Department dated 11.08.1991 the incentive of advance increment for obtaining higher qualification was available to the officials in BPS-1 to BPS-15 only. Moreover, there were policy instructions issued by Finance Department that the facility of advance increment on higher qualification was not extendable to the teaching cadre. The stance of the appellant that financial facility once granted to civil servant cannot be taken back is not justifiable if the same had been given mistakenly. Being custodian of the public exchequer the District Accounts Officer, Swat was duty bound to take corrective measures and his action for correcting wrong cannot be termed as illegal. Moreover, it has also come to limelight that the facility of advance increments upon acquiring higher qualification has been discontinued vide Provincial Government Notification dated 13.09.2001 and as such the instant case is past and closed transaction.

06. In view of above discussion the appeal in hand is dismissed being devoid of merit. Costs shall follow the event. Consign.

07. *Pronounced in open Court at camp court Swat and given under our hands and the seal of the Tribunal on this 04th day of December, 2023.*



RASHIDA BANO
Member (J)
Camp Court Swat





MUHAMMAD AKBAR KHAN
Member (E)
Camp Court Swat

04.12.2023 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file consisting of (04) pages, the appeal in hand is dismissed being devoid of merit. Costs shall follow the event. Consign.

03. *Pronounced in open Court at camp court Swat and given under our hands and the seal of the Tribunal on this 04th day of December, 2023.*


RASHIDA BANO
Member (J)
Camp Court Swat


MUHAMMAD AKBAR KHAN
Member (E)
Camp Court Swat