

1221/15

21.09.2016

None present for the appellant. M/S Sohail Ahmad Zeb, Assistant and Malik Muhammad Haroon, AAO alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Notice be issued to appellant. To come up for rejoinder and final hearing before the DB on 14.02.2017 at camp court, Abbottabad.

Member

Chairman
Camp court, A/Abad.

14.02.2017

Appellant in person and Mr. Muhammad Siddique, Sr.GP for the respondents present. Rejoinder not submitted. Requested for adjournment To come up for rejoinder and final hearing on 23.08.2017 before the D.B at camp court, Abbottabad.

Member
Camp court, A/Abad

23.08.2017

Appellant in person and Mr. Muhammad Bilal, Deputy District Attorney alongwith Zubair Ali, ADO for and Muhammad Haroon, AAO for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today in connected service appeal No. 371/2015, entitled "Rashid Iqbal Khan Versus District Comptroller of Accounts, Abbottabad and others", this appeal is also dismissed. Parties are left to bear their own costs. File be consigned to the record room.

Member

Chairman
Camp Court, A/Abad.

ANNOUNCED

17.11.2015

Appellant in person present. Argued that identical service appeal No. 371/2015 has already been admitted to regular hearing.

In view of the above, this appeal is also admitted to regular hearing. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 18.2.2016 before S.B at Camp Court A/Abad.

Appellant Deposited
Security & Process Fee

Chairman
Camp Court A/Abad

18.02.2016

Appellant in person and Mr. Haroon Khan, Senior Auditor for respondent No. 1 alongwith Mr. Muhammad Saddique, Sr. GP for all respondents present. Written reply by respondent No. 1 submitted. Representative of respondent No. 1 relies on the same on behalf of respondent No. 2. Request for adjournment was made on behalf of respondents No. 3 and 4. Last opportunity granted. To come up for written reply/comments on behalf of respondents No. 3 and 4 on 19.5.2016 before S.B at Camp Court A/Abad.

19.5.2016

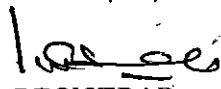

Appellant in person M/S Muhammad Irshad, SO, and Malik Muhammad Haroon, AAO for respondents No. 1 to 3 alongwith Mr. Muhammad Siddique, Sr.GP for all the respondents present. Written reply by respondent No. 3 submitted. Learned Sr.GP relies on written reply of respondent No. 3 on behalf of respondent No. 4. The appeal is assigned to D.B for rejoinder and final hearing for 21.09.2016 at camp court, Abbottabad.

Chairman,
Camp Court, A/Abad.

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1221/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	03.11.2015	<p>The appeal of Mr. Muhammad Jahangir Khan resubmitted today by him, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: center;"> REGISTRAR</p> <p>This case is entrusted to Touring Bench A.Abad for preliminary hearing to be put up thereon <u>17-11-2015</u>.</p> <p style="text-align: center;"> CHAIRMAN</p>
2		

The appeal of Mr. Muhammad Jehangir Khan S/O Abdul Karim Senior C.T Teacher, Government Centennial Model Secondary School (Boys) English Medium R/O House No. L.M 72/2, Moh. Qazi Chitta Pul Malikpur, Abbottabad received to-day i.e. on 7.09.2015, is incomplete on the following scores, which is returned to him for completion and resubmission within 15 days:-

1. Annexure-E is a better copy, without any signature of issuing authority. Signed copy may be placed on file.

2. The original appeal has been submitted with five copies. One more copy may also be submitted with the appeal.

No. 1398 /ST,

Dated 10/9 /2015

10/9/15
REGISTRAR
KPK SERVICE TRIBUNAL,
PESHAWAR.

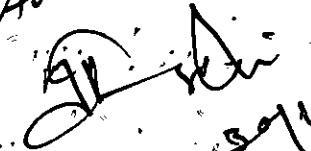
Appellant Muhammad Jehangir Khan

Sir,
Resubmitted, In the first instant appellant may point out that he received the appeal today, i.e. 30/10/2015, Post office sent to it in some farflung areas of Abbottabad District and finally on 30/10/2015 it is delivered to appellant, in this respect photo copy of Envelope is also attached.

② Required copy of Annexure E is annexed with appeal as per dissection

P.T.O

③ Appellant submitted 5
copies, 4 copies for 4 respondents
and one copy for court pleader
Similarly two court copies
are also sent with original
Appeal.

Sir, it is therefore humbly
requested that appeal may
please be fixed for preliminar
ary hearing before the Hon, b
Tribunal at Camp Court
Abbottabad on next hour of
November 2015. ^{Attest}

30/10/2015

Dated 30/10/2015 Appellant in person.

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 1221 of 2015

Muhammad Jahangir Khan S/O Abdul Karim, Snr: CT Teacher,
Government Centennial Model Secondary School (Boys) English
Medium Abbottabad, Resident of House No. L.M -72/2, Mohallah
Qazi, Chitta Pul Malikpura Tehsil & District Abbottabad.

Appellant

Versus

District Comptroller of Accounts, Abbottabad and 03 Other.


Respondents

SERVICE APPEAL

INDEX

S.No	DESC: OF DOCUMENTS	ANNEXURES	PAGE No
1	Memo; of Service Appeal	----	1 to 6
2	Copy of Notification No FD (PRC) 1-1/89 dated 07/08/1991 issued by respondent no 03	A	7 to 8
3	Copy of selection grade order dated 27/11/2001	B	9 to 10
4	Copy of Notification dated 01/10/2007	C	11 to 12
5	Copy of Notification dated 26/01/2008	D	13
6	Copy of Notification/letter dated 31/12/2013	E	14 to 15
7	Copy of representation / application dated 01/06/2015.	F	16

Dated 04/09/2015


(Muhammad Jahangir Khan)
Appellant in person

①

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Service Appeal No: 1221 of 2015

**P.W.P. Province
Service Tribunal
Diary No. 1046
Date 7-9-15**

Muhammad Jahangir Khan S/O Abdul Karim, Snr: CT Teacher,
Government Centennial Model Secondary School (Boys) English
Medium Abbottabad, Resident of House No. L.M -72/2, Mohallah
Qazi, Chitta Pul Malikpura Tehsil & District Abbottabad.

Appellant

Versus

- 1 District Comptroller of Accounts, Abbottabad.
- 2 Accountant General Khyber Pakhtunkhwa Peshawar.
- 3 Government of Khyber Pakhtunkhwa through Secretary Finance
Department Peshawar.
- 4 Government of Khyber Pakhtunkhwa through Secretary
(Elementary & Secondary Education), Department Peshawar.

Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, FOR
GRANT OF (TWO INCREMENTS) ONE PREMATURE &
ONE SPECIAL INCREMENT ALONGWITH ALL BACK
BENEFITS W.E.F. 01/09/2007 UNDER THE LAW AND ON
THE BASIS OF CLARIFICATION ISSUED UNDER
NOTIFICATION NO FD (SOSR-1) 2-123/2013 DATED
31/12/2013 ISSUED BY RESPONDENT NO 3 (FINANCE
DEPARTMENT) BEING SELECTION GRADE HOLDER
ALREADY WORKING IN THE SAME SCALE ON
UPGRADATION OF HIS POST. THE IMPUGNED ACTION
OF RESPONDENT NO 1, I.E. NONE DECIDING OF
REPRESENTATION DATED 01/06/2015 AND NONE
GRANTING OF TWO INCREMENTS IS, WITHOUT
LAWFUL AUTHORITY, ARBITRARY, DISCREMINATORY

As-submitted to-day
and filed.

Registered
3/11/15

AGAINST THE PRINCIPAL OF NATURAL JUSTICE AND INEFFECTIVE UPON THE APPELLANT'S RIGHTS OF ADVANCE INCREMENTS, GRANTED BY COMPETENT AUTHORITY AND FOR ACCEPTANCE OF DEPARTMENTAL REPRESENTATION DATED 01/06/2015 WHICH IS STILL PENDING WITH OUT RESPONSE.

PRAER:-

ON ACCEPTANCE OF INSTANT SERVICE APPEAL, RESPONDENTS MAY PLEASE BE DIRECTED FOR GRANT OF (TWO INCREMENTS) ONE PREMATURE & ONE SPECIAL INCREMENT ALONGWITH ALL BACK BENEFITS W.E.F. 01/09/2007 UNDER THE LAW AND MAY PLEASE BE IMPOSED HEAVY COST AGAINST THE RESPONSIBLE RESPONDENTS.

Respectfully Sheweth,

FACTS

- 1) That appellant is a school teacher, he is now working as Senior C.T teacher in (BPS 16), appellant being B.A/B.Sc II-Division, was placed in BPS No 14 from BPS No 09, on the basis of Para No 02 of Notification No FD (PRC) 1-1/89 dated 07/08/1991 issued by respondent no 03. Copy of Notification is annexed as **Annexure "A"**
- 2) That appellant was awarded Selection Grade in BPS No 15 with effect from 02/12/1998, while his Juniors were remained in BPS No 14 on the basis of same notification dated 07/08/1991(Annexure A). Copy of selection grade order is annexed as **Annexure "B"**
- 3) That respondent No 3 issued Notification No. SO(FR)10-22(B)/2005 dated.01/10/2007, wherein CT teachers were also

up-graded in BPS No 15 on the basis of condition of B.A/B.Sc II-Division, but those selection grade holders (including appellant) who were already working in BPS No 15 with effect from 02/12/1998, was not up-graded in the same notification. Copy of Notification dated 01/10/2007 is annexed as Annexure "C"

- 4) That It is well relevant to mention here that in the Ist up-gradation Notification dated 07/08/1991 and recent Notification 01/10/2007, condition of at least B.A 2nd Division was imposed for further up-gradation in BPS 15, even this condition has been relaxed in the next Notification dated 26/01/2008, but in the same notification appellant was not compensated by placing him in BPS No 16. Copy of Notification dated 26/01/2008 is annexed as Annexure "D"
- 5) That appellant has come to know that respondent No 3 (Finance Department) has compensated the selection grade holders by granting two increments (one special advance increment for same scale promotion) while other is (one premature increment for up-gradation).
- 6) That when respondents especially respondent no 1 did not allow and grant two increments in his office routine process, to the appellant being selection grade holder, working in BPS # 15 while post of CT was upgraded in BPS # 15. In the prevailing situation appellant along-with one other submitted an application dated 01/06/2015 for grant of two increments to the respondent no 1 on the basis of clarification Notification/ letter No. FD(SOSR-1) 2-123/2013 Dated Peshawar the: 31/12/2013 issued by respondent No 03. Copy of Notification/letter and representation/ application dated 01/06/2015 are annexed as Annexure "E" & "F".

- 7) That respondent no 1 received application through proper Channel which is still pending with out any response after passing the statutory period of 90 days, and appellant's appeal is within 120 days from the submission of his departmental remedy/representation, Hence this appeal inters-alia on the following ground.

Grounds

- a) That appellant under the law, was entitled to 02 increments and the respondents (respondent No 01) was not at all have powers to deny the 02 increments, which were granted by the competent authority (Finance Department) and respondent no 1 & 2 is not competent authority but just executing agency, the denial of respondent no 1 is with out jurisdiction illegal and malafide.
- b) That this Honourable Tribunal has been pleased to admit several same nature service appeals on 19/05/2015 and next date is fixed as 23/07/2015, title of main appeal is "Rashid Iqbal Khan VS Govt" appeal No 371/2015 is also fixed on 15/09/2015 along with other appeal No 381 to 387 etc
- c) That in the matter of two increments relating to Selection Grade holders, the respondent no 3 has already issued several clarifications/letters to quarter concerned including respondent no 1 & 2 but they did not implement the legal policy of the Government and committed illegal & impugned action while respondents were legally bound to grant of increments to appellant along-with all back benefits/arrears.

- d) That it is absolutely proved that appellant was awarded BPS # 15 as a selection grade with effect from 02/12/1998, and his BPS No 15 is personal to him while the scale of CT post was BPS No 09 and on 01/10/2007 in pursuance of Notification, the scale of CT post was Up-graded from BPS No 09 to 15 and appellant was already working in BPS # 15 with effect from 02/12/1998 and appellant was not granted any benefit under the Article 25 of the Constitution by the respondents, factually and legally these two increments are granted to appellant to eliminate discrimination.
- e) That those junior teachers who were working in BPS # 14 before 01/10/2007 and was up-graded in BPS # 15, has granted one premature increment, but appellant is not granted one premature increment on the basis of up-gradation and one special increment on the basis of with in scale promotion, thus impugned action of respondents is illegal with out jurisdiction.
- f) That the action of respondent no 1 is apparent activity of serious disapproval of the policy of the competent authority, which is beyond its jurisdiction and tried to create self made complications and reopen the same matters which are finally decided under the rule of law.
- g) That appellant is dragged into litigation, that his claims of two Increments have been solved completely by the competent authority (Finance Department) by issuing several letters for clarification; the conduct of the respondents is

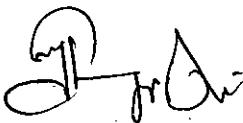
admittedly arbitrary capricious unjust and against all norms of justice contemptuous and as such requires indulgence of this Honourable Court by awarding appropriate Cost to the respondents.

h) That the involved matters in the instant appeal is relating to pay and under the law limitation did not run in such matters and it is an admitted fact that under question illegal Action fell in the matter of great public importance.

It is, therefore, respectfully prayed that on acceptance of instant service appeal, respondents may please be directed for grant of (two increments) one premature & one special increment along-with its arrears with all back benefits w.e.f. 01/09/2007 under the law with-out any further delay and may please be imposed heavy cost against the responsible respondents.

Any other relief for which the appellant is entitled, and the same is not asked/prayed specifically, may very kindly be granted in favour of the appellant.

Dated 04/09/2015

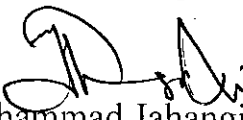

(Muhammad Jahangir Khan)
Appellant in person

Affidavit

I, Muhammad Jahangir Khan S/O Abdul Karim, Snr: CT Teacher, Government Centennial Model Secondary School (Boys) English Medium Abbottabad, Resident of House No. L.M -72/2, Mohallah Qazi, Chitta Pul Malikpura Tehsil & District Abbottabad, do here by affirm on oath that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and this instant appeal is first appeal & same nature of any other appeal is not pending before Honourable Tribunal

Dated 04/09/2015




(Muhammad Jahangir Khan)
Appellant in person

DEPONENT

GOVERNMENT OF NORTH WEST FRONTIER PROVINCE
FINANCE DEPARTMENT

NOTIFICATION

Peshawar, dated the 7th August, 1991

No, FD(PCR)1-1/89- In exercise of all the powers enabling him in this behalf the Governor of the North West Frontier Province is pleased to order the following scales of pay/benefits to various categories of Teachers with effect from 01-07-1991.

S, No	Name of the post	Benefits extended
1	2	3
1.	Primary schools teachers (PTC/JV)	<p>All the present and future Primary school Teachers who hold the qualification of FA/F, Sc(2nd Division) plus existing prescribed professional training shall be placed in BPS-9 with 1/3rd in selection grade BPS-10.</p> <p>All other teachers who do not possess higher qualification shall continue getting existing pay scales with selection grade accordingly.</p> <p>However the higher scales/Grades allowed to these teachers will be personal to them and the inter-se- seniority will remain intact.</p>
2.	Elementary school teachers(E.S.T/S.V /PET/Drawing Master/PTI.	<p>All the present and future elementary school teachers who possess the qualification of BA/B, Sc(2nd division) plus existing prescribed professional training shall be placed in BPS-14 with 1/3rd in selection grade BPS-15.</p> <p>All other teachers who do not possess higher qualifications shall continue getting existing pay scale with Selection Grade accordingly.</p> <p>However, the higher scales/Grades allowed to these teachers will be personal to them and the inter-se- seniority will remain intact.</p>
3.	Arabic teachers -	<p>All the present and future Arabic teacher who possess the qualification of Trained Fazal with BA/B, Sc (2nd Division) and Five years teaching experience or MA, Arabic or equivalent qualifications shall be placed in BPS-14 with 1/3rd in Selection Grade BPS-15</p>

contd ----- 2

Attested
[Signature]

8

S.No Name of the post Benefits Extended

1 2 3

All other teachers who do possess Higher qualification shall continue getting existing pay scale with Selection Grade accordingly.

However, the Higher Scale/Grade allowed to these will be personal to them and the inter-se seniority will remain intact.

4. Secondary school teachers.

All the present and future Secondary school teachers with prescribed qualification under the rules shall be placed in BPS-16 with 1/3rd in Selection Grade BPS-17.

The advance increments sanctioned by Finance Department vide para -9 of its letter No: FD(SR-1) 1-67/82 dated: 24.08.1983 will not be admissible on acquiring / possessing qualifications for which higher pay scales are being sanctioned through this notification.

sd/ x x x

SECRETARY TO GOVERNMENT OF NORTH WEST FRONTIER PROVINCE FINANCE DEPARTMENT.

Endst No: FD(PRC) 1-1/89

Dated Peshawar the 7th August, 1991.

A copy is forwarded to the accountant General, N.W.F.P Peshawar for information and necessary action.

sd/ x x x

(GHULAM DASTGIR AKHTAR) Deputy Secretary(Regulation) Finance Department.

Endst No: FD(PRC) 1-1/89

Dated Peshawar the 7th August, 1991

A copy is forwarded to :-

1. All Administrative Secretaries to Govt of N.W.F.P.
2. All Commissioners of Divisions in N.W.F.P
3. All District Accounts Officers.
4. All the District Education Officer
5. Secretary to the Govt of N.W.F.P
6. Registrar Peshawar High Court.
7. Registrar Service Tribunal N.W.F.P
8. All Deputy Commissioners/Political Agents / District and session Judges in N.W.F.P

sd/ x x x

(GHULAM DASTGIR AKHTAR) Deputy Secretary (Regulation) Finance Department.

Ali Akbar

AWARD OF SELECTION GRANTS

The following CT GHS teachers were selected in BPS-12 and BPS-15 (in case of ...) against their names.

S/No & Ser/No.	Name of Teacher / Surname	Grade	Date	Remarks
1/145	Mohd. Sajjad CT GHS No. 4 Alkotla	14.11.90	2.12.98	-
2/146	Sultan Khan CT GHS No. 2 Alkotla	14.11.90	-do-	-
3/147	Sultan Khan CT GHS No. 4 Alkotla	14.11.90	-do-	-
4/148	Ali Khan CT GHS No. 1 Alkotla	14.11.90	-do-	-
5/150	Mohd. Saleed CT GHS No. 4 Alkotla	14.11.90	-do-	-
6/151	Mohd. Ashraf CT GHS L. N. 14.11.90	14.11.90	-do-	-
7/152	Mohd. Sajjad CT GHS No. 1 Alkotla	14.11.90	-do-	-
8/153	Ghulam Murtaza CT GHS No. 11 Maira	14.11.80	-do-	-
9/154	Zulfiqar Ahmad CT GHS Bandi Dhander	14.11.90	-do-	-
10/155	Sajjad Fariz CT GHS No. 4 Havelian	14.11.90	-do-	-
11/156	Naseer Ahmed CT GHS Barla Pir Khan	14.11.90	-do-	-
12/157	Shafiq-ur-Rehman CT GHS Kokal Farooq	14.11.90	-do-	-
13/158	Mohd. Jehangir CT GHS Kokal Farooq	14.11.90	-do-	-
14/159	Mohd. Idrees Khan CT GHS Sheikhal Bardi	14.11.90	-do-	-
15/160	Mohd. Kifayat Khan CT GHS Dhuraj	14.11.90	-do-	-
16/161	Mohd. Aslam CT GHS Maira	24.11.90	-do-	-
17/162	Arif Khan CT GHS No. 3 At	15.12.90	-do-	-
18/164	Ishfaq-ur-Rehman CT GHS Chantour	15.12.90	-do-	-
19/165	Ahmad Khan CT GHS Rajoyia	1.1.91	-do-	-
20/166	Nazir Mohd. CT GHS Lakhala	24.1.91	-do-	-
21/167	Saifur Ali Shah CT GHS No. 1 Havelian	1.2.91	-do-	-
22/168	Sohail Akhyar CT GHS No. 1 Havelian	1.2.91	-do-	-
23/169	Jehangir Khasi CT GHS Bandi Phullan	27.1.91	-do-	-

CONDITIONS. 1) Necessary entry to this effect should be made in their S/Books. 2) An undertaking on the following prescribed form should be obtained from the teachers concerned and posted in their S/Books duly attested by their respective Heads of Institutions before the award of payment of arrears etc.

UNDERTAKING

I, _____ of GHS/GMS _____ hereby given an undertaking to the effect that if any over payment is made to me as a result of an error in my S/Grade or detected later on it

Attested
[Signature]

DISTRICT OFFICER,
(SECONDAIDY),
FOR REGULATIVE DISTRICT OFFICER,
(EDU: IIT) ABBOTABAD.

Handwritten signature

Director of Secondary Education NWFP, Peshawar.
District accounts Officer, Abbotabad.
All the Principals/HMs, concerned.
Local office.

1.
2.
3.
4-28.

Copy to the
/BB-IV/S/Grades (20) dated 27/11/2001

DISTRICT OFFICER,
(SECONDAIDY),
(EDU: IIT) ABBOTABAD.

3) Direct to the board of Selection Grade...
4) In case one of the above named teachers...
5) The names of the teachers in their service...
and other entries in their service...

10

Annexure B,

(9)

OFFICE OF THE EXECUTIVE DISTRICT OFFICER(EDU: LIT) ABBOTTABAD

AWARD OF SELECTION GRADE.

The following CT(G) are hereby awarded Selection Grades in BPS-12 and BPS-15 (in case of BA-II Div) w.e.f the date noted against each, their names:-

S/No & Seb/No.	Name of teachers/ schools.	D/O Prom: to Pvt. Grd.	D/O award of S/Grade	Remarks
1/145	Mohd. Saifdar, CT GHS No.4 Atd.	14.11.90	2.12.98	-
2/146	Sultan Khan CT GHS No.2 Atd.	14.11.90	-do-	-
3/147	Saleem Shahzad CT GHBS Newshehr.	14.11.90	-do-	-
4/149	Allah Dad CT GHS No.1 Abbottabad.	14.11.90	-do-	-
5/150	Mohd. Sadeed CT GHS No.4 Abbottabad	14.11.90	-do-	-
6/151	Mohd: Ashraf CT GHS Langrial	14.11.90	-do-	-
7/152	Mohd. Sajjad CT GHS No.1 Abbottabad.	14.11.90	-do-	-
8/153	Ghulam Murtaza CT GHS Namli Maira.	14.11.90	-do-	-
9/154	Zulfiqar Ahmed CT GHS Bandi Dhundan	14.11.90	-do-	-
10/155	Sajjad Parviz CT GHS No.1 Havelian.	14.11.90	-do-	-
11/156	Naseer Ahmed CT GHS Panda Pir Khan	14.11.90	-do-	-
12/157	Shafiq-ur-Rehman CT GHS Kokal Barseen	14.11.90	-do-	-
13/158	Mohd Jehangir CT GMS Khokarials	14.11.90	-do-	-
14/159	Mohd Idrees Khan CT GHS Sheikhal Bandi	14.11.90	-do-	-
15/160	Mohd Kibria Khan CT GHS Bhuraj	14.11.90	-do-	-
16/161	Mohd Rashid CT GHS Chando Maira	24.11.90	-do-	-
17/163	Arif Khan CT GHS No.3 Atd.	15.12.90	-do-	-
18/164	Ishfaq-ur-Rehman CT GHS Dhantour	16.12.90	-do-	-
19/165	Arahad Khan CT GHS Rajoyia	1.1.91	-do-	-
20/166	Nazir Mohd CT GHS Lakhala	24.1.91	-do-	-
21/170	S.Zafer Ali Shah CT GHS No1 Havelian	1.2.91	-do-	-
22/171	Sohail Akhtar CT GHS No.1 Havelian	1.2.91	-do-	-
23/169	Jehangir Iqbal CT GMS Bandi Phullan	27.1.91	-do-	-

- CONDITIONS. 1) Necessary entry to this effect should be made in their S/Books.
 2) An undertaking on the following prescribed form should be obtained from the teacher concerned and posted in their S/Book duly attested by their respective Heads of Institutions before the drawal of payment of arrears etc.

UNDERTAKING

I _____ CT GHBS/GHS/GMS _____ hereby given an undertaking to the effect that if any over payment is made to me as a result of incorrect award & S/grade and detected later on it

(Handwritten Signature)

10

will be made good by recovery from my pay/Pension and gratuity as may be fixed by the Govt./Department.

- 3) Arrear due to the award of Selection grade would be drawn and disbursed to them.
- 4) In case any one of the above named teacher have already been awarded S/Grade at Provincial/Divisional level his name /names may be intimated to this office within a week time positively.
- 5) The principals/Hms/DDOs are responsible to check their particulars and other entries from their Service Books.

(SARDAR MOHAMMAD AYUB)
EXECUTIVE DISTRICT OFFICER
(EDU: LIT) ABBOTTABAD.

Encl: No. 5365-90/EB-IV/S/Grades(CT) dated A'Abad the 27/11/2001

Copy to the:-

1. Director of Secondary Education NWFP Peshawar
2. District Accounts Officer Abbottabad.
3. P&AO local office
- 4-28 All the Principals/HMs, concerned.

*Alisled
D.P.*

DISTRICT OFFICER
(SECONDARY)
FOR/EXECUTIVE DISTRICT OFFICER
(EDU: LIT) ABBOTTABAD.

Annexure (C)

(11)

Government of N-W.F.P.
Finance Department
No.SO(FR)10-22(B)/2005
Dated: 01-10-2007

To
The Secretary to Govt. of NWFP
Schools & Literacy Department

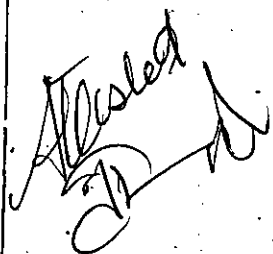
Subject: UP-GRADATION OF VARIOUS POSTS OF
TEACHERS/CAREER STRUCTURE IN SCHOOLS &
LITERACY DEPARTMENT GOVERNMENT OF N.W.F.P.

Sir,

I am directed to refer to your letter No.SO(G)S&L/1-47/2007 dated 01-10-2007 on the subject noted above and to inform that the Chief Minister NWFP has been pleased to up-grade various posts of teachers in Schools & Literacy Department N-W.F.P. as per details given below in respect of those incumbents who acquire or possess the qualification and experience mentioned against each with immediate effect.

S.#	Designation/Existing Pay Scale	Qualification	Revised Pay Scale
1.	Primary School Teacher (PST) BPS-07	F.A/F.Sc. at least 2 nd Division with PTC/Diploma in Education	09
2.	PST with requisite experience renamed as Head Teacher/Head Mistress of Primary School BPS-07	On the basis of 10 years service/experience as Primary School Teacher in BPS-09	12
3.	C.T BPS-09	B.A/B.Sc. at least 2 nd Division with Diploma in Education/CT	15
4.	AW/CT (Technical)/Industrial Arts/Home Economics BPS-09	B.A/B.Sc. at least 2 nd Division with Diploma in Education/ Certificate from Directorate of Curriculum & Teachers Education NWFP Abbottabad in Agro. Tech/ Industrial Arts/Home Economics	15
5.	D.M. BPS-09	B.A/B.Sc. at least 2 nd Division with Drawing Master Course.	15
6.	PET BPS-09	B.A/B.Sc. at least 2 nd Division with JDPE	15
7.	Qari/Qaria BPS-07	Hafiz-e-Quran with SSC at least 2 nd Division and Sanad in Qir'at	12
8.	SSTs/SST Tech/Agri: with requisite experience renamed as Sr. SST/Sr. SST Tech./Sr. SST Agri: BPS-16	M.A/M.Sc. at least 2 nd Division with B.Ed./M.Ed./MA Edu. or equivalent qualification	17
9.	DPE BPS-16	M.Sc. at least 2 nd Division in (HPE)	17
10.	Librarian BPS-16	Master degree in Library Science at least 2 nd Division	17

2. The Promotion/Direct Recruitment against the upgraded posts shall be made as per laid down procedure and in accordance with the Service Rules to be framed pursuant to the relevant provisions of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules-1989 read with the NWFP Civil Servants Act, 1973 in the light of the

Attested


meeting held on 26-09-2007 of the committee constituted vide Schools & Literacy Department Notification No.SO(G)/S&L/1-47/2007 dated 01-08-2007.

Audit copy may please be prepared and sent to this Department for authentication/signature.

[Signature]
Section Officer (FR)

Endst: of even No. & Date

Copy for information & necessary action to:

- 1. Accountant General NWFP
- 2. Director Schools & Literacy NWFP Peshawar
- 3. Director of Education FATA NWFP Peshawar
- 4. PSO to Chief Minister NWFP
- 5. PSO to Chief Secretary NWFP
- 6. PS to Secretary Finance Department NWFP
- 7. All District/Agency Accounts Officers in NWFP

[Signature]
Section Officer (FR)

[Handwritten signature]

Fozal Her.
DA to DS-R-II
Finance Deptt



GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

Dated Peshawar, the 26th January, 2008.

NOTIFICATION

NO.FD/SO(FR)10-22/2007. In supercession of this Department's letter No.SO(FR)10-22(B)/2005 dated 01-10-2007 and in pursuance of the decisions of the meeting held under the Chairmanship of Secretary Establishment on 2-1-2008, the Competent Authority is pleased to allow upgradation for the incumbents of the posts as per details given below w.e.f. 1-10-2007:-

S.NO	Existing Designation and Pay Scale	Qualification	Upgraded Scale
1	Primary School Teacher (PST) (BPS-07).	FA/FSc and are trained teachers	BPS-09 (one time only)
2	Primary School Teacher (PST) with requisite experience renamed as Head Teacher/Head Mistress of Primary Schools (BPS-07).	Having 10 years service	BPS-12 (one time only)
3	CT (BPS-09).	BA/BSc and are trained teachers	BPS-15 (one time only)
4	SETs (BPS-16)	With at least ten years service. Upgradation to the post shall be made through DPC as per laid down procedure.	BPS-17
5	Qari/Qaria (BPS-07)	Hafiz Quran with SSC	BPS-12

SECRETARY TO GOVT. OF NWFP
FINANCE DEPARTMENT

Endst No. & Date even.

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

- 1) All the Secretaries in NWFP, Peshawar.
- 2) All the DCOs/EDOs Schools & Literacy Department, NWFP.
- 3) Accountant General, NWFP, Peshawar.
- 4) Director Schools & Literacy NWFP, Peshawar.
- 5) Director of Education FATA NWFP, Peshawar.
- 6) PSO to Chief Minister, NWFP.
- 7) PSO to Chief Secretary, NWFP.
- 8) PS to Secretary Finance Department, NWFP.
- 9) All District/Agency Accounts Officers in NWFP.

Alloshid
ED

Naib Khan
(NAIB KHAN)
SECTION OFFICER (FR)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

14

Annexure E

No. FD (SOSR-1) 2-123/2013
Dated Peshawar the: 31-12-2013

To

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue Khyber Pakhtunkhwa.
3. The Secretary of Governor, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Department in Khyber Pakhtunkhwa.
8. All Divisional Commissions in Khyber Pakhtunkhwa.
9. All Political Agents/District & Sessions Judges in Khyber Pakhtunkhwa.
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.

Dear Sir,

I am directed to refer to this department's notification No. FD (SR-1) 2-4/2008 dated 04-04-2009 and to state the certain queries have been received from different quarters as to whether the employees, who were holding selection grade prior to up-gradation of their posts in BPS already held by them, are also eligible to the benefit of premature increment on up-gradation of their posts.

2. In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

3. This order will take effect from 01-09-2007.

Attested
QJH

Razaullah Khan
(RAZAULLAH KHAN)

Add: Secretary (Regulation)

(Cont'd...P/2)

Endst: No.FD (SOSR-1) 2-123/2013

Dated: 31st Dec, 2013

Copy for information & necessary action to the:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa/FATA.


(MASOOD KHAN)

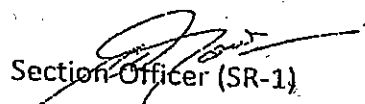
Deputy Secretary (Reg-II)

Endst: No. & Date Even

Copy for information is forwarded to:-

1. All the Section Officers/Budget Officer in Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Private Secretary to Senior Minister Finance, Khyber Pakhtunkhwa.
3. The Private Secretary to Secretary to Secretary/F.As to Special Secretary, Additional Secretaries/Deputy Secretaries in Finance Deptt:




Section Officer (SR-1)

Annexure F,

16

To

The District Accounts Officer
District Abbottabad.

The Principal (D.D.O)
Government High School
Pattan Khurd, Abbottabad.

Subject

APPLICATION FOR GRANT OF (TWO INCREMENTS) ONE PREMATURE & ONE SPECIAL INCREMENT ALONGWITH ITS ARREARS W.E.F. 01/09/2007 ON THE BASIS OF CLARIFICATION ISSUED UNDER NOTIFICATION NO FD (SOSR-1) 2-123/2013 DATED 31/12/2013 ISSUED BY GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT PESHAWAR FOR SELECTION GRADE HOLDERS ALREADY WORKING IN THE SAME SCALE ON UPGRADATION OF THEIR POSTS.

Respected Sir,

Applicant has the honour to request their submission that he is working in the capacity of S CT, in Elementary & Secondary Education Department Abbottabad.

That he had granted higher scale on the basis of award of Selection Grade in BPS 15 w.e.f. 02/12/1998 before the up-gradation of his existed post, which were up-graded in the year 2007 and no benefit in the shape of further up-gradation or in the shape of increments were given to him in the up-gradation of his present existing post.

That now Government of Khyber Pakhtunkhwa has been pleased to compensate the applicant and other equally placed teachers/employees/ persons by issuing the clarification Notification No FD (SOSR-1) 2-123/2013 Dated 31/12/2013 for grant of two increments mentioned in above subject.

It is therefore requested that appropriate measures may please be taken in accordance with the pay matters of undersigned teacher in pursuance of his remaining claims referred above in full detail and outstanding arrears may also be drawn in the coming pay.

Dated 01/06/2015

Attested
[Signature]

[Signature]

Muhammad Jahangir Khan S/O Abdul Karim, CT Teacher, Government High School, Pattan Khurd, Abbottabad. Resident of House No. L.M -72/2, Mohallah Qazi, Chitta Pul Malikpura Tehsil & District Abbottabad.

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA,
SERVICES TRIBUNAL PESHWAR CAMP COURT ABBOTTABAD

Appeal No.240/2015


Muhammad Jehangir Khan Appellant

VERSUS

Govt: of Khyber Pakhhtunkhwa & others Respondents

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S.No.	Description	Page No.	Annexure
1.	Comments alongwith affidavit	1 to 3	
2.			


District Comptroller of Accounts
Abbottabad
(Respondent No. 1)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA,
SERVICES TRIBUNAL PESHWAR CAMP COURT ABBOTTABAD

Appeal No.240/2015

Muhammad Jehangir Khan Appellant

VERSUS

Govt: of Khyber Pakhhtunkhwa & others Respondents

Joint Para wise Comments on behalf of Respondent

Respectfully Sheweth:

Comments on behalf of respondents are submitted as under:-

PRELIMINARY OBJECTION:-

1. That the appellant has no cause of action to file the instant appeal.
2. That the appeal of the appellant is time barred. Hence liable to be dismissed
3. That the instant appeal is not maintainable as there is no final order.
4. That the appellant has filed the present appeal to pressurize the respondents
5. That the appellant has not come to this Honourable Tribunal with clean hands
6. That the appellant is estopped to sue due to his own conduct.
7. That the instant appeal is not maintainable due to non joinder & mis joinder of necessary parties.
8. That the legislator has the authority to legislate as it has mandate to make rules and policies from time to time through a recognized process and service's law does not provide the provision of judicial review, hence appeal is not tenable.
9. That the appellant is at liberty to join service after due process of law equivalent to his qualification & the Government is not bound to elevate the incumbency.

Factual Objections:-

1. Relates to record
2. Relates to record
3. Relates to record
4. That it is pertinent to state that appellant has already been awarded selection grade BPS 15 from BPS 09 and has also been granted next stage & plus pre mature as the selection grade has already been declared promotion. It is further stated that the appellant has also been promoted from BPS-15 to BPS-16 in March 2013. The appellant is seeking fringe benefit of 02 increments through the instant appeal whereas it is conspicuous that he does not fall within the true spirit of the letter No. FD (SOSR 1)2-123/2014 dated 21-02-2014 as the order is effective after its issuance *ibid*. However, it is stated that as per letter No. FDS (SOSR 1)2-2013 dated 31-12-2013, 01 special advance increment is being allowed in the sheer light of the letter *ibid*. copy of the same is attached as annexure "D", with the service appeal. Furthermore, it is explained that appellant is Abinitio misconceived & his appeal is hit by the Principle of laches.
5. In reply to para No. 5 of the instant appeal there is no such intimation regarding the decision of the Honourable Supreme Court of Pakistan as the implementation is the basic task of the Finance Department while this office is an executing agency.
6. As contended in para No. 5
7. In reply to para No. 7 it is stated that appellant may kindly be directed to get his pay fixed from the District Accounts Office.


Grounds

- a. That ground a is incorrect hence, denied.
- b. That ground b is subject to cogent proof.
- c. That it is pertinent to state that appellant has already been awarded selection grade BPS 15 from BPS 09 & he has also been granted next stage & plus pre mature as the selection

grade has already been declared promotion. It is further stated that the appellant has also been promoted from BPS 15 to BPS 16 in March, 2013. The appellant is seeking fringe benefit of 02 increments through the instant appeal whereas it is conspicuous that the case of appellant does not fall within the true spirit of the letter No. FD (SORS 1)2-123/2014 dated 21-02-2014 as the order is effective after its issuance *ibid*. however, it is stated that as per letter No. FD(SOSR 1)2-123/123 dated 31-12-2013, 01 special advance increment is being allowed in the sheer light of the letter *ibid*.

- d. That detailed reply has already been given in para No. 4 of the factual objections
- e. As contended in para No. 4 & ground c.
- f. Incorrect *hanc e*, denied c.
- g. That ground g as composed is incorrect hence, denied.
- h. That ground h as composed is incorrect hence, denied as instant appeal is hopelessly time barred.
- i. That the respondent seeks leave of this Honourable Tribunal to agitate additional grounds at the time of arguments.

Under the circumstance, it is humbly prayed that the instant appeal is meritless against the law and facts, hence liable to be dismissed without further proceeding.


District Comptroller of Accounts
Abbottabad

AFFIDAVIT

I, Mr. Attique ur Rehman Lodhi, District Comptroller of Accounts Abbottabad, do hereby affirm and declare that contents of forgoing comments are correct and true according to the best of my knowledge and helief and nothing has been suppressed from this Honourable Court.

A. R. Lodhi
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeals No.1221/2015
Muhammad Jehangir Khan, CT, Abbottabad.

...

Appellant

VERSUS

1. District Comptroller of Accounts, Abbottabad.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary, Finance Department, Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education Department), Peshawar.

...

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.03

Respectfully Sheweth,

Preliminary Objections:

- i. That the appellant has no cause of action.
- ii. That the appellant has no locus standi.
- iii. That the appeal in hand having no merits is not maintainable.
- iv. That appeal is time barred.
- v. This Honourable Tribunal lacks jurisdiction to entertain the appeal.
- vi. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

Facts:

1. Needs no comments by Respondent No.03.
2. Needs no comments by Respondent No.03.
3. Correct.
4. Correct to the extent of Notification dated 07.08.1991 and 01.10.2007. However, appellant has neither been discriminated, nor he is an aggrieved person.
5. Incorrect. Provincial Govt:(Finance Department) vide letter No.FD(SR-I)2-4/2008 dated 04.04.2009 sanctioned one special advance increment to the Assistants, Auditors, Senior Clerks and Junior Clerks as well as employees from BPS-01 to BPS-04 in their upgraded/moved up scales(**Annexure-A**). The matter was further clarified (in consultation with Govt: of Pakistan, Finance Division, Islamabad) vide letter No.FD(SOSR-I)2-123/2013 dated 31.12.2013 (**Annexure-B**) wherein selection grade holders were compensated by granting one special advance increment on the basis of same scale promotion and lastly vide Para-3 of Finance Department letter No.FD(SOSR-1)2-123/2013 dated 31.03.2014(**Annexure-C**), it was further clarified that the said facility is not allowed to any other category of employees except Ministerial Cadre.
6. Needs no comments by Respondent No.03.
7. Relates to Respondent No.04 being Administrative Department.

Cont'd Next Page-(2)

Grounds:

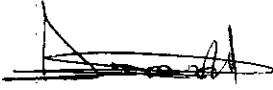
- a) Incorrect. Appellant is not entitled to 02 increments as elaborated vide Para-5 of "Facts".
- b) Pertain to Court Record hence needs no comments.
- c) Incorrect. Respondent No.02 has correctly implemented Policy of the Provincial Government and committed no illegality.
- d) Incorrect. Appellant has been treated in accordance with the Policy in vogue and has not been subjected to discrimination in any shape.
- e) Incorrect. Appellant is not entitled to the increments as clarified above.
- f) Incorrect. Respondent NO.1 has correctly applied policy of the competent authority while dealing with the case of the appellant.
- g) Incorrect. Claim of the appellant for grant of 02 increments is based on misconception of the Policy/Clarification issued by the Competent Authority & Provincial Government.
- h) Incorrect. Appeal of the Appellant is time-barred.

It is therefore, humbly prayed that appeal of the appellant being devoid of merit may be dismissed.


SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA,
FINANCE DEPARTMENT
(RESPONDENT NO.3)

AFFIDAVIT

I, Irshad Muhammad, Section Officer(Litigation-II) do hereby solemnly affirm and declare that the contents of accompanying Parawise Comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal.


DEPONENT
SECTION OFFICER(LIT-II)
Govt. of Khyber of Pakhtunkhwa
FINANCE DEPARTMENT



**GOVERNMENT OF N.W.F.P
FINANCE DEPARTMENT
(REGULATION WING)**

Dated Peshawar the: April 04, 2009

Notification

NO.FD(SR-1)2-4/2008. The competent authority has been pleased to sanction one special advance increment to the Assistants, Auditors, Senior Clerks and Junior Clerks as well as employees from BPS-01 to BPS-04 in their up-graded / moved up pay scales, allowed vide Govt. of NWFP Finance Department Notification No. FD/SO (FR)7-2/2007, dated 28th July, 2007.

2. These orders will take effect from 01-09-2007 to be payable in next financial year, 2009-10

**SECRETARY TO GOVT. OF NWFP
FINANCE DEPARTMENT**

Ends: of even No & date.

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

1. All Administrative Secretaries to Government of NWFP.
2. Senior Member, Board of Revenue, NWFP, Peshawar.
3. Accountant General, NWFP, Peshawar.
4. Secretary to Governor, NWFP, Peshawar.
5. Principal Secretary to Chief Minister, NWFP.
6. Secretary Provincial Assembly, NWFP.
7. All Heads of Attached Departments in NWFP.
8. Registrar, Peshawar High Court, Peshawar.
9. All Zilla Nazims / District Coordination Officers / Political Agents / District & Sessions Judges / Executive District Officers in NWFP.
10. Registrar, NWFP, Public Service Commission, Peshawar.
11. Registrar, Service Tribunal NWFP.
12. All Autonomous and Semi Autonomous Bodies in NWFP.
13. Secretaries to Government of Punjab, Sindh and Balochistan, Finance Department.
14. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
15. The Senior District Accounts Officers Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir (Lower).
16. The Treasury Officer, Peshawar.
17. All District / Agency Accounts Officers in NWFP / FATA.
18. Director Local Fund Audit, NWFP, Peshawar.
19. Director, FMIU, Finance Department for placing the same on Website of Finance Department.
20. All Section Officers / Budget Officers in Finance Department.
21. PS to Chief Secretary, NWFP.
22. PS to Additional Chief Secretary, NWFP.
23. PS to Minister for Finance NWFP.
24. PS to Finance Secretary / Special Secretary in Finance Department.
25. PAs to All Addl. Secretaries / Deputy Secretaries in Finance Department.

(ABDUL JABBAR)
Section Officer (SR-I)

(MASOOD KHAN)
Deputy Secretary (Reg-II)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

**NO. FD (SOSR-1) 2-123/2013
Dated Peshawar the: 31-12-2013**

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

**CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.**

Dear Sir,

I am directed to refer to this Department's notification No.FD (SR-1) 2-4/2008 dated 04-04-2009 and to state that certain queries have been received from different quarters as to whether the employees, who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, are also eligible to the benefit of premature increment on up-gradation of their posts.

2. In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible, also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

3. This order will take effect from 01-09-2007.

(RAZAULLAH KHAN)
Addl: Secretary (Regulation)

(MASOOD KHAN)
Deputy Secretary (Reg-II)

Endst: No .FD (SOSR-1) 2-123 /2013

Dated 31st Dec, 2013

Copy for information & necessary action to the:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.

sd/
(MASOOD KHAN)
Deputy Secretary (Reg-II)

Endst: No. & Date Even

Copy for information is forwarded to:-

1. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Private Secretary to Senior Minister Finance, Khyber Pakhtunkhwa.
3. The Private Secretary to Secretary / P.As to Special Secretary, Additional Secretaries / Deputy Secretaries in Finance Deptt.

sd/
Section Officer (SR-1)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

**NO. FD (SOSR-1) 2-123/2013
Dated Peshawar the: 31-03-2014**

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject: CLARIFICATION REGARDING GRANT OF ONE SPECIAL ADVANCE INCREMENT TO THE EMPLOYEES HOLDING SELECTION GRADE PRIOR TO UPGRADATION OF THEIR POSTS IN BPS ALREADY HELD BY THEM.

Dear Sir,

I am directed to refer to this Department's circular letter dated 31-12-2013 on the above noted subject and to state that a number of references have been received in this Department seeking clarification about the admissibility of one special advance increment granted vide this Department's letter No. FD (SR-1) 2-4/2008 dated 04-04-2009.

2. In this connection, it is to clarify that the said increment has only been extended to the officials who were holding Selection Grade prior to up-gradation of their posts in BPS, already held by them, just as in the case of same scale promotion, for instance:-

- i. Junior Clerks (B-5) holding selection grade BPS-07 upgraded to BPS-7 is entitled to one special advance increment.
- ii. Senior Clerks (B-7) holding selection grade BPS-09 upgraded to BPS-09 is entitled to one special advance increment
- iii. Assistants (B-11) holding selection grade BPS-15 upgraded to BPS-14, is **not** entitled to one special advance increment

3. The above referred Notification / circular letter is not applicable to any other category of employees.


(MASOOD KHAN)
 Deputy Secretary (Reg-II)

Endst: No .FD (SOSR-1) 2-123 /2013

Dated , 31-03-2014

Copy for information & necessary action to the:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
8. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
9. The Private Secretary to Senior Minister Finance, Khyber Pakhtunkhwa.
10. The Private Secretary to Secretary / P.As to Special Secretary, Additional Secretaries / Deputy Secretaries in Finance Deptt:


(Wazir Muhammad Afgar)
Section Officer (SR-1)

**BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Court Copy

original

Service Appeal No: 1221 of 2015

Muhammad Jahangir Khan S/O Abdul Karim, Snr: CT Teacher, Now
SST Government Middle School (Boys) Salol Bandi Abbottabad,
Resident of House No. L.M -72/2, Mohallah Qazi, Chitta Pul
Malikpura Tehsil & District Abbottabad.

Appellant

Versus

District Comptroller of Accounts, Abbottabad and 03 Other.

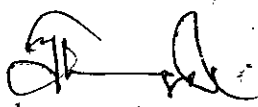
Respondents

REJOINDER (REPLICATION)

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Dated 17/10/2016


(Muhammad Jahangir Khan)
Appellant Inperson

(1)

**BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No: 1221 of 2015

Muhammad Jahangir Khan S/O Abdul Karim, Snr: CT Teacher, Now SST Government Middle School (Boys) Salol Bandi Abbottabad, Resident of House No. L.M -72/2, Mohallah Qazi, Chitta Pul Malikpura Tehsil & District Abbottabad.

Appellant

Versus

District Comptroller of Accounts, Abbottabad and 03 Other.

Respondents

**REJOINDER (REPLICATION) ON THE COMMENTS
(REPLY) OF THE RESPONDENTS.**

Note That only respondent no 3 (Finance Department) filed its comments/reply, while other respondents relied upon the comments/reply of Finance Department and they did not file their own comments, so appellant submits the following joint rejoinder.

Respectfully Sheweth,

ON PRELIMINARY OBJECTIONS

- i) That appellant has good cause of action to file instant appeal before this Honourable Tribunal, it is filed on the basis of rights accrued from his seniority and there is no exceptions or discrimination can be discontinued the lawful benefits as already been decided in the Judgments of Supreme Court dated 19/07/2007 passed in CPLA 525 of 2007 & Judgment dated 29/01/2008 passed in Civil Review Petition No 216 of 2007 filed by Finance Department, as well as dated 16/03/2011 passed in Civil Appeal 118-P of 2009.

- ii) That appellant has good locus standi to file instant service appeal.
- iii) That the appeal is not only maintainable but also having on merits and respondents illegally tried to reopen the same matters which is finally decided by competent court of law in the presence of respondents.
- iv) That appeal is not time bared but filed well in time, there is no limitation against Pay matters, and cause of action arises every month when the appellant receives his pay slip.
- v) That the matter of Jurisdiction of this Honourable Tribunal is based under Article 212 of the Constitution, thus the plea of lacks of jurisdiction is totally illegal.
- vi) That there is no question of mis-joinder and non-joinder of necessary parties, all the necessary parties are already included in the panel of respondents and no one is left, Moreover respondents did not point out specifically.

ON FACTUAL OBJECTIONS

- 1-2) That in reply of Para no 1 of the service appeal, respondents marked it as "No comments" they deliberately concealed the real factual position of the case, it is very out set that the crux of the whole case is discussed in para no 1 & 2 and the very basic issue is available but respondents did not reply it and it stands admitted under the law.
- 3-4) That respondents marked para No 3 & 4 as "correct" but did not admit the appellant as an aggrieved person, the action of respondents by non granting of two increments (one special & pre-mature) is totally unlawful and against

the prevailing seniority rules, if for the sake of arguments it is assumed that the action of respondents is correct, the very legal position arises, as where would be seniority placement and incumbency ? and it is also against the enforced service structure & seniority law & justice, under the settled seniority rule of law, "no junior will get no better position over his seniors" would be ruined, thus respondents did not clarify the factual and legal position of the case and side tracked the very important material/facts and tried to concealment of facts.


- 5) That respondents admitted that selection grade holders were entitled for increments whose post were up-graded in BPS already held by them, but respondents insisted that this benefits is only extended to ministerial staff only, **while under the law, it is not even possible that procedure of fixation of pay in Up-gradation of post or in promotion or in any manner, different for one category of employees from other category of employees,** it is pertinent to mention here that representative of respondent no 3 (Mr Irshad Muhammad SO Litigation-II) has already availed these increment in the same situation as appellant, Furthermore the stand of respondents is directly against the judgments of Supreme Court dated 19/07/2007, 29/01/2008. & 16/03/2011 these are now final and thus unlawful action of respondents is against the Article of 189 of the Constitution, Copies of the judgments of Supreme Court dated 19/07/2007 passed in CPLA 525 of 2007 & Judgment dated 29/01/2008 passed in Civil Review Petition No 216 of 2007 filed by Finance Department, as well as dated 16/03/2011 passed in Civil Appeal 118-P of 2009 are annexed as **Annexure H & I**

6-7) That comments of respondents are not to the point as raised in service appeal and incorrect, appellant reiterated the same position taken in para 6-7 of his service appeal.

ON GROUNDS

- a) That the reply of the respondents are totally incorrect and they are trying to misinterpretation of letters as referred in their comments, while appellant is entitled for two increments which is discussed by appellant in detailed herein above of this rejoinder so here no need to repeat it.
- b-g) That the case of appellant is very much clear and it is directly based on Supreme Court Judgment and comments of the respondents are totally incorrect, also not relevant to the points raised in appeal, and it is admitted facts that reply of respondents is absolutely ambiguous, and claim of appellant cannot be denied by the respondents in the presence of Supreme Court Judgment as referred above, thus the position taken in Para (b-g) in appeal by appellant is reiterated.

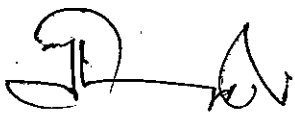
It is humbly prayed that this appeal may kindly be accepted along with all back benefits.


 (Muhammad Jahangir Khan)
 Appellant Inperson

Dated 17/10/2016

Verification

It is verified that contents of instant rejoinder is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal.


 (Muhammad Jahangir Khan)
 Appellant Inperson

Dated 17/10/2016

Annexure A.H.

(5)

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Rana Bhagwandas, ACJ

Mr. Justice Sardar Muhammad Raza Khan

C.P.L.A No.525 of 2007

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.498 of 2006)

99. 1504 - 1505 / 07

Rashid Iqbal Khan

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Rashid Iqbal Khan, in person

For the respondents:

Sardar Shaukat Hayat Khan,
Additional Advocate General, NWFP

C.P.L.A No.526 of 2007

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.499 of 2006)

Muhammad Haroon Qureshi

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Muhammad Haroon Qureshi, in person

For the respondents:

Sardar Shaukat Hayat Khan,
Additional Advocate General, NWFP

Date of hearing:

19.7.2007

Judgment

Rana Bhagwandas, ACJ - Sole grievance of the petitioners before the NWFP Service Tribunal (hereinafter referred to as the Tribunal) appears to be that after induction in BPS-14 as Elementary School Teachers, in terms of NWFP Government Circular dated 7.8.1991 they are entitled to four advance increments in terms of NWFP Government circular letter No.FD(PRC)1-1/89 dated 11.8.1991 on acquiring higher qualification MA/MSc. They have been non-suited by the Tribunal vide judgment dated

ATTACHED

Superintendent
Supreme Court of Pakistan

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24.4.2007 on the premise that they had been placed in higher grade i.e. BPS-14 on acquiring BA/BSc Second Division in terms of Finance Division circular letter No.FD(PRC)1-1/89 dated 7.8.1991, therefore, the provisions of circular letter dated 11.8.1991 issued by the Finance Department would not be applicable to teachers. Tribunal has expressed the view that this circular would be applicable only to ministerial staff, as such, the petitioners were not entitled to the relief claimed by them. Petitioners being aggrieved seek leave to appeal.

2. We have heard the petitioners, who argued their case in person whereas learned Additional Advocate General, NWFP has appeared on Court notice issued to the respondents. With the assistance of learned Additional Advocate General, we have examined both the circulars, which do not exclude the teachers in the Education Department from the benefits accruing out of circular letter dated 11.8.1991, as on its plain reading it applies to all civil servants in BPS 1 to 15 serving under the Provincial Government. Para 5 of the said circular provides mechanism for grant of advance increments to officials for possessing/attaining higher educational qualification. Para 5, clause (c) caters for the grant of four advance increments on attaining MA/MSc where prescribed qualification is FA/FSc. It would be seen that the petitioners were placed in BS-14 by reason of having acquired the qualification of BA/BSc Second Division which is the prescribed qualification for the post of Elementary School Teacher. It is not the case of respondent-Government that the petitioners have already drawn advance increments on acquiring higher qualification of MA/MSc.

3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in pursuance of the circular letter dated 7.8.1991, which was personal to them, the

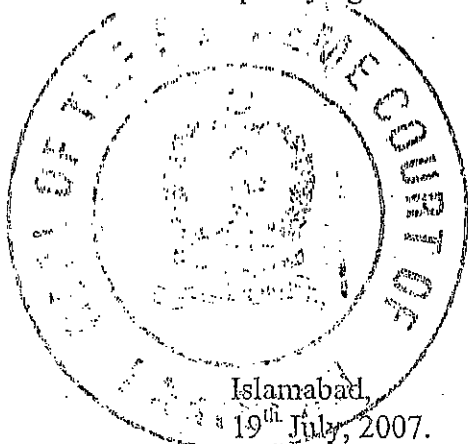
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ATTESTED

Superintendent
Supreme Court of Pakistan

petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991 provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra).

3. For the aforesaid facts, circumstances and reasons, we are of the considered view that the Tribunal committed a serious error of law, therefore, the impugned judgment is liable to be set aside. Consequently, we convert these petitions into appeals and, on acceptance, declare that the petitioners would be entitled to four advance increments with effect from the date of qualifying MA/MSc exam.



Not approved for reporting.
Rha

10/8/07

*Old Rama Chughwani, New
Prof. Professor Muhammad Raza Khan*

Certified to be true copy

MJ Ali 28/11/2007

Superintendent
Supreme Court of Pakistan
ISLAMABAD

Date: _____
 No. of words: _____
 No. of folios: _____
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 Court Fee stamp: _____
 Date of completion of _____
 Copy: _____
 Date of del. copy of _____
 Copy: _____
 Compared by: _____

Attested
10/8/07

IN THE SUPREME COURT OF PAKISTAN
(REVIEW/ORIGINAL JURISDICTION)

Present:

MR. JUSTICE MUHAMMAD NAWAZ ABBASI
MR. JUSTICE MUHAMMAD QAIM JAN KHAN
MR. JUSTICE MOHAMMAD MOOSA K. LEGHARI

C.R.P. NOs. 216 & 217/2007 in C.P. NOs. 525 & 526/2007
(On review from the judgment dated 19.7.2007 passed in C.A. Nos. 1504 & 1505/2007)

Secretary to Govt. of N.W.F.P. Finance Department, Peshawar
...Petitioner (in both cases)

Versus

Rashid Iqbal Khan and others ... Respondents (in C.R.P. No. 216/07)
Muhammad Haroon Qureshi and others ... Respondents (in C.R.P. No. 217/07)

CR.O.P. NOs. 66 & 67/2007 IN C.A. NOs. 1504 & 1505/2007

Rashid Iqbal Khan ...Petitioner (in Cr.O.P. No. 66/07)
Muhammad Haroon Qureshi ...Petitioner (in Cr.O.P. No. 67/07)

Versus

District Coordination Officer, Abbottabad and others
... Respondents (in both cases)

For the Petitioner : (in C.R.P. Nos. 216 & 217/07)	Sardar Shaukat Hayat, Addl.A.G. N.W.F.P
For the Petitioners : (in Cr.O.P. 66 & 67/07)	In Person
For the Respondents : (in C.R.P. Nos. 216 & 217/07)	N.R.
For the Respondents : (in Cr.O.P. 66 & 67/07)	Sardar Shaukat Hayat, Addl.A.G. N.W.F.P
Date of hearing :	29.1.2008

ORDER

MUHAMMAD NAWAZ ABBASI, J:- The learned Addl. Advocate General has contended that this Court while interpreting the circulars in question has taken a view contrary to the correct legal position according to which private respondents were not entitled to the benefit of advance increments. We are afraid, the learned Addl.A.G. instead of pointing out any mistake of law and fact in the judgment made an attempt to re-open the case on merits. The scope of

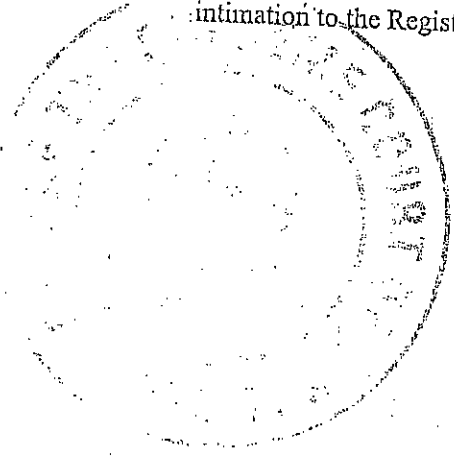
~~APPROVED~~

COMPETENT AUTHORITY
FOR THE SUPREME COURT OF PAKISTAN
ISLAMABAD

review is very limited and the points already considered in the judgment under review cannot be allowed to be re-agitated in review jurisdiction. These review petitions being without any substance are accordingly dismissed.

Crl.O.P. Nos. 66 & 67/2007

The learned Addl.A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court. —



Adv. Muhammad Nawaz Abbasi, J.
Adv. Muhammad Qasim Jamil, J.
Adv. Muhammad Masood Leghari, J.

Certified to be a copy

[Signature]
13/02/08

Islamabad
29.1.2008
(Ejaz Goraya)

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28-1-08

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13-02-2008

25-02-2008

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Annexure I,

10

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

MR JUSTICE NASIR-UL-MULK

MR JUSTICE AMIR HANI MUSLIM

CIVIL APPEAL NO 118-P OF 2009

(On appeal from the judgment of the N.W.F.P.
Service Tribunal, Peshawar, dated 26.1.2009
passed in Appeal No. 1060 of 2008)

Attaullah Khan

Appellant

Versus

Executive District Officer Schools and
Literacy Lakki Marwat and others

Respondents

For the Appellant:

Mr. Waqar Ahmed Seth, AQSC
Mr. Mir Alam Khan, AOR

For the Respondents:

Mr. Naveed Akhtar. Addl. A.G. K.P.K.

Date of Hearing:

16th March, 2011.

JUDGMENT

NASIR-UL-MULK. J.- This appeal by leave of this Court is directed against the judgment of the N.W.F.P. (now K.P.K) service Tribunal dated 26.1.2009 whereby the relief of three advance increments granted to the appellant was declined.

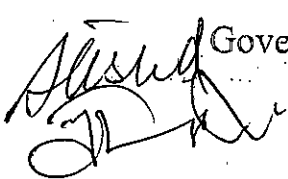
2. The appellant is a school teacher who had acquired additional qualification of M.A. (Pushto) on 26.9.2001. He along with others was granted three advance increments on attaining the additional qualification. It is the grievance of the appellant that the benefit of the pay, as a result of increments was not granted to him. The learned counsel for the appellant has referred to Para 5(iii) of the notification dated 11.8.1991 which states that "*The advance increments shall be allowed at the time of recruitment or acquisition of higher qualification whichever is later. In cases where the employee is already at the*

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[Signature]

maximum of the scale, he may be allowed the number of advance increments beyond the maximum of the scale as personal pay to be absorbed at the time of his move-over/promotion." It is contended that the appellant had reached the maximum scale but the advance increments had not been absorbed in the appellant's pay at the time of his promotion from BPS-16 to BPS-17. In the comments filed by the respondents before the Service Tribunal the following plea was taken in para 4 for denying the relief to the appellant:-

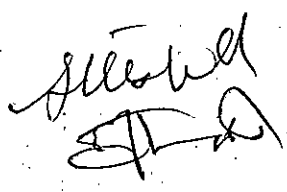
"The para is not based on facts. At the time of fixation his pay has been fixed RS. 5490/- on the maximum of BPS-16. In the light of government N.W.F.P. Peshawar Finance Department No. FD-SRV/2-123/2001 dated 23.10.2001 duly verified by Accountant General N.W.F.P. vide his No H.24(110)LM/Vol-11/5255-56 dated 26.12.2003 in similar nature case of Mr. Dil Jan SET GHS Daulat Khel. (Copy Attached) that the three advance increments as a personal pay over and above the maximum of the relevant scale is not admissible to the teaching staff. Hence, he is not entitled for the said benefits."

3. In the notification 23.10.2001 relied upon in the above comments, the finance Department, Government of N.W.F.P. had declined the relief mentioned in para 5(ii) of the notification dated 11.8.1991 to teachers on the ground that it is only for the benefit of government officials and is not admissible as a general principal in case of Basic Pay Scale rules 1983. This view of the Finance Department was contrary to the view point of the Accountant General office. From the past correspondence and para 4 of the comments filed by the respondents the only reason for declining the relief to the appellant was that the benefits of para 5(ii) of the notification of 11.8.1991 was not extendable to teaching staff. The question as to whether the notification dated 11.8.1991 was applicable to the teaching staff of the provincial Government came under discussion before this Court in case of Rashid Iqbal



C.A No 118-P of 2009

Khan V District Coordination officer, Abbottabad and others (C.P.L.A. No. 525 of 2007) and it was held that the said notification was applicable to all Provincial civil servants in N.W.F.P. without any exception, including teachers in the Education Department of the Province. This judgment dated 19.7.2007 has therefore, settled the issue that the appellant would be entitled to the benefit of para 5(ii) of the notification dated 11.8.1991. That notification clearly declares that an employee who acquires additional qualification but has reached the maximum of the scale would be granted the advance increments beyond the maximum scale as personal pay that would be absorbed in his pay at the time of his promotion. The Tribunal has not examined the case from the above perspective. The appeal is, therefore allowed the impugned judgment is set aside and the appellant is granted the relief prayed for in the appeal filed by appellant before the N.W.F.P. Service Tribunal.



Peshawar
March, 16. 2011

Sd/-
MR NASIR-UL-MULK J

Sd/-
MR AMIR HANI MUSLIM J

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeals No.1221/2015
Muhammad Jehangir Khan, CT, Abbottabad.

... **Appellant**

VERSUS

1. District Comptroller of Accounts, Abbottabad.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary, Finance Department, Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary (Elementary & Secondary Education Department), Peshawar.

... **Respondents**

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.03

Respectfully Sheweth,

Preliminary Objections:

- i. That the appellant has no cause of action.
- ii. That the appellant has no locus standi.
- iii. That the appeal in hand having no merits is not maintainable.
- iv. That appeal is time barred.
- v. This Honourable Tribunal lacks jurisdiction to entertain the appeal.
- vi. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

Facts:

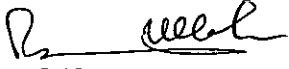
1. Needs no comments by Respondent No.03.
2. Needs no comments by Respondent No.03.
3. Correct.
4. Correct to the extent of Notification dated 07.08.1991 and 01.10.2007. However, appellant has neither been discriminated, nor he is an aggrieved person.
5. Incorrect. Provincial Govt:(Finance Department) vide letter No.FD(SR-I)2-4/2008 dated 04.04.2009 sanctioned one special advance increment to the Assistants, Auditors, Senior Clerks and Junior Clerks as well as employees from BPS-01 to BPS-04 in their upgraded/moved up scales(**Annexure-A**). The matter was further clarified (in consultation with Govt: of Pakistan, Finance Division, Islamabad) vide letter No.FD(SOSR-I)2-123/2013 dated 31.12.2013 (**Annexure-B**) wherein selection grade holders were compensated by granting one special advance increment on the basis of same scale promotion and lastly vide Para-3 of Finance Department letter No.FD(SOSR-1)2-123/2013 dated 31.03.2014(**Annexure-C**), it was further clarified that the said facility is not allowed to any other category of employees except Ministerial Cadre.
6. Needs no comments by Respondent No.03.
7. Relates to Respondent No.04 being Administrative Department.

Cont'd Next Page-(2)

Grounds:


- a) Incorrect. Appellant is not entitled to 02 increments as elaborated vide Para-5 of "Facts".
- b) Pertain to Court Record hence needs no comments.
- c) Incorrect. Respondent No.02 has correctly implemented Policy of the Provincial Government and committed no illegality.
- d) Incorrect. Appellant has been treated in accordance with the Policy in vogue and has not been subjected to discrimination in any shape.
- e) Incorrect. Appellant is not entitled to the increments as clarified above.
- f) Incorrect. Respondent NO.1 has correctly applied policy of the competent authority while dealing with the case of the appellant.
- g) Incorrect. Claim of the appellant for grant of 02 increments is based on misconception of the Policy/Clarification issued by the Competent Authority & Provincial Government.
- h) Incorrect. Appeal of the Appellant is time-barred.

It is therefore, humbly prayed that appeal of the appellant being devoid of merit may be dismissed.


SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA,
FINANCE DEPARTMENT
(RESPONDENT NO.3)

AFFIDAVIT

I, Irshad Muhammad, Section Officer(Litigation-II) do hereby solemnly affirm and declare that the contents of accompanying Parawise Comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal.


DEPONENT
SECTION OFFICER(LIT-II)
Govt. of Khyber of Pakhtunkhwa
FINANCE DEPARTMENT



**GOVERNMENT OF N.W.F.P
FINANCE DEPARTMENT
(REGULATION WING)**

Dated Peshawar the: April 04, 2009

Notification

NO.FD(SR-1)2-4/2008. The competent authority has been pleased to sanction one special advance increment to the Assistants, Auditors, Senior Clerks and Junior Clerks as well as employees from BPS-01 to BPS-04 in their up-graded / moved up pay scales, allowed vide Govt. of NWFP Finance Department Notification No. FD/SO (FR)7-2/2007, dated 28th July, 2007.

2. These orders will take effect from 01-09-2007 to be payable in next financial year, 2009-10

**SECRETARY TO GOVT: OF NWFP
FINANCE DEPARTMENT**

Endst: of even No & date.

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

1. All Administrative Secretaries to Government of NWFP.
2. Senior Member, Board of Revenue, NWFP, Peshawar.
3. Accountant General, NWFP, Peshawar.
4. Secretary to Governor, NWFP, Peshawar.
5. Principal Secretary to Chief Minister, NWFP.
6. Secretary Provincial Assembly, NWFP.
7. All Heads of Attached Departments in NWFP.
8. Registrar, Peshawar High Court, Peshawar.
9. All Zilla Nazims / District Coordination Officers / Political Agents / District & Sessions Judges / Executive District Officers in NWFP.
10. Registrar, NWFP, Public Service Commission, Peshawar.
11. Registrar, Service Tribunal NWFP.
12. All Autonomous and Semi Autonomous Bodies in NWFP.
13. Secretaries to Government of Punjab, Sindh and Balochistan, Finance Department.
14. The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
15. The Senior District Accounts Officers Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir (Lower).
16. The Treasury Officer, Peshawar.
17. All District / Agency Accounts Officers in NWFP / FATA.
18. Director Local Fund Audit, NWFP, Peshawar.
19. Director, FMIU, Finance Department for placing the same on Website of Finance Department.
20. All Section Officers / Budget Officers in Finance Department.
21. PS to Chief Secretary, NWFP.
22. PS to Additional Chief Secretary, NWFP.
23. PS to Minister for Finance NWFP.
24. PS to Finance Secretary / Special Secretary in Finance Department.
25. PAs to All Addl. Secretaries / Deputy Secretaries in Finance Department.

(ABDUL JABBAR)
Section Officer (SR-1)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

**NO. FD (SOSR-1) 2-123/2013
Dated Peshawar the: 31-12-2013**

To:

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:

**CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.**

Dear Sir,

I am directed to refer to this Department's notification No.FD (SR-1) 2-4/2008 dated 04-04-2009 and to state that certain queries have been received from different quarters as to whether the employees, who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, are also eligible to the benefit of premature increment on up-gradation of their posts.

2. In this connection, the Provincial Government in consultation with Government of Pakistan, Finance Division, has to clarify that one special advance increment is admissible, also to the employees who were holding Selection Grade prior to up-gradation of their posts in BPS already held by them, just as in the case of same scale promotion.

3. This order will take effect from 01-09-2007.

(RAZAULLAH KHAN)
Addl: Secretary (Regulation)

Endst: No .FD (SOSR-1) 2-123 /2013

Dated 31st Dec, 2013

Copy for information & necessary action to the:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.


(MASOOD KHAN)
Deputy Secretary (Reg-II)

Endst: No. & Date Even

Copy for information is forwarded to:-

1. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
2. The Private Secretary to Senior Minister Finance, Khyber Pakhtunkhwa.
3. The Private Secretary to Secretary / P.As to Special Secretary, Additional Secretaries / Deputy Secretaries in Finance Deptt:


Section Officer (SR-1)



Annex: C

**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

**NO. FD (SOSR-1) 2-123/2013
Dated Peshawar the: 31-03-2014**

To:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
10. The Registrar, Peshawar High Court, Peshawar.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject: **CLARIFICATION REGARDING GRANT OF ONE SPECIAL
ADVANCE INCREMENT TO THE EMPLOYEES HOLDING
SELECTION GRADE PRIOR TO UPGRADATION OF THEIR
POSTS IN BPS ALREADY HELD BY THEM.**

Dear Sir,

I am directed to refer to this Department's circular letter dated 31-12-2013 on the above noted subject and to state that a number of references have been received in this Department seeking clarification about the admissibility of one special advance increment granted vide this Department's letter No. FD (SR-1) 2-4/2008 dated 04-04-2009.

2. In this connection, it is to clarify that the said increment has only been extended to the officials who were holding Selection Grade prior to up-gradation of their posts in BPS, already held by them, just as in the case of same scale promotion, for instance:-

- i. Junior Clerks (B-5) holding selection grade BPS-07 upgraded to BPS-7 is entitled to one special advance increment.
- ii. Senior Clerks (B-7) holding selection grade BPS-09 upgraded to BPS-09 is entitled to one special advance increment
- iii. Assistants (B-11) holding selection grade BPS-15 upgraded to BPS-14, is **not** entitled to one special advance increment

3. The above referred Notification / circular letter is not applicable to any other category of employees.


(MASOOD KHAN)
Deputy Secretary (Reg-II)

P.T.O

Endst: No .FD (SOSR-1) 2-123 /2013

Dated 31-03-2014

Copy for information & necessary action to the:-

1. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
3. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
4. The Director, FMIU, Finance Department.
5. The Treasury Officer, Peshawar.
6. The Secretary, Board of Revenue, Khyber Pakhtunkhwa.
7. All the District & Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
8. All the Section Officers / Budget Officers in Finance Department, Khyber Pakhtunkhwa, Peshawar.
9. The Private Secretary to Senior Minister Finance, Khyber Pakhtunkhwa.
10. The Private Secretary to Secretary / P.As to Special Secretary, Additional Secretaries / Deputy Secretaries in Finance Deptt.


(Wazir Muhammad Afgar)
Section Officer (SR-1)

BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No: 1221 of 2015

Muhammad Jahangir Khan S/O Abdul Karim, Snr: CT Teacher, Now
SST Government Middle School (Boys) Salol Bandi Abbottabad,
Resident of House No. L.M -72/2, Mohallah Qazi, Chitta Pul
Malikpura Tehsil & District Abbottabad.

Appellant

Versus


District Comptroller of Accounts, Abbottabad and 03 Other.

Respondents

REJOINDER (REPLICATION)

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2	Copy of Judgment of Supreme Court dated 19/07/2007 passed in CPLA 525 of 2007 & Judgment dated 29/01/2008 passed in Civil Review Petition No 216 of 2007 filed by Finance Department.	H	5 to 9
3	Copy of Judgment of Supreme Court dated 16/03/2011 passed in Civil Appeal 118-P of 2009.	I	10 to 12



(Muhammad Jahangir Khan)
Appellant Inperson

Dated 17/10/2016

(1)

**BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No: 1221 of 2015

Muhammad Jahangir Khan S/O Abdul Karim, Snr: CT Teacher, Now SST Government Middle School (Boys) Salol Bandi Abbottabad, Resident of House No. L.M -72/2, Mohallah Qazi, Chitta Pul Malikpura Tehsil & District Abbottabad.

Appellant

Versus

District Comptroller of Accounts, Abbottabad and 03 Other.

Respondents

**REJOINDER (REPLICATION) ON THE COMMENTS
(REPLY) OF THE RESPONDENTS.**

Note That only respondent no 3 (Finance Department) filed its comments/reply, while other respondents relied upon the comments/reply of Finance Department and they did not file their own comments, so appellant submits the following joint rejoinder.

Respectfully Sheweth,

ON PRELIMINARY OBJECTIONS

- i) That appellant has good cause of action to file instant appeal before this Honourable Tribunal, it is filed on the basis of rights accrued from his seniority and there is no exceptions or discrimination can be discontinued the lawful benefits as already been decided in the Judgments of Supreme Court dated 19/07/2007 passed in CPLA 525 of 2007 & Judgment dated 29/01/2008 passed in Civil Review Petition No 216 of 2007 filed by Finance Department, as well as dated 16/03/2011 passed in Civil Appeal 118-P of 2009.

- ii) That appellant has good locus standi to file instant service appeal.
- iii) That the appeal is not only maintainable but also having on merits and respondents illegally tried to reopen the same matters which is finally decided by competent court of law in the presence of respondents.
- iv) That appeal is not time bared but filed well in time, there is no limitation against Pay matters, and cause of action arises every month when the appellant receives his pay slip.
- v) That the matter of Jurisdiction of this Honourable Tribunal is based under Article 212 of the Constitution, thus the plea of lacks of jurisdiction is totally illegal.
- vi) That there is no question of mis-joinder and non-joinder of necessary parties, all the necessary parties are already included in the panel of respondents and no one is left, Moreover respondents did not point out specifically.

ON FACTUAL OBJECTIONS

- 1-2) That in reply of Para no 1 of the service appeal, respondents marked it as "No comments" they deliberately concealed the real factual position of the case, it is very out set that the crux of the whole case is discussed in para no 1 & 2 and the very basic issue is available but respondents did not reply it and it stands admitted under the law.
- 3-4) That respondents marked para No 3 & 4 as "correct" but did not admit the appellant as an aggrieved person, the action of respondents by non granting of two increments (one special & pre-mature) is totally unlawful and against

the prevailing seniority rules, if for the sake of arguments it is assumed that the action of respondents is correct, the very legal position arises, as where would be seniority placement and incumbency ? and it is also against the enforced service structure & seniority law & justice, under the settled seniority rule of law, "no junior will get no better position over his seniors" would be ruined, thus respondents did not clarify the factual and legal position of the case and side tracked the very important material/facts and tried to concealment of facts.

- 5) That respondents admitted that selection grade holders were entitled for increments whose post were up-graded in BPS already held by them, but respondents insisted that this benefits is only extended to ministerial staff only, **while under the law, it is not even possible that procedure of fixation of pay in Up-gradation of post or in promotion or in any manner, different for one category of employees from other category of employees,** it is pertinent to mention here that representative of respondent no 3 (Mr Irshad Muhammad SO Litigation-II) has already availed these increment in the same situation as appellant, Furthermore the stand of respondents is directly against the judgments of Supreme Court dated 19/07/2007, 29/01/2008 & 16/03/2011 these are now final and thus unlawful action of respondents is against the Article of 189 of the Constitution, Copies of the judgments of Supreme Court dated 19/07/2007 passed in CPLA 525 of 2007 & Judgment dated 29/01/2008 passed in Civil Review Petition No 216 of 2007 filed by Finance Department, as well as dated 16/03/2011 passed in Civil Appeal 118-P of 2009 are annexed as **Annexure H & I**

(4)

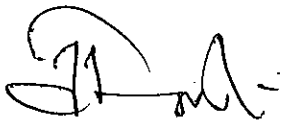
6-7) That comments of respondents are not to the point as raised in service appeal and incorrect, appellant reiterated the same position taken in para 6-7 of his service appeal.

ON GROUNDS

- a) That the reply of the respondents are totally incorrect and they are trying to misinterpretation of letters as referred in their comments, while appellant is entitled for two increments which is discussed by appellant in detailed herein above of this rejoinder so here no need to repeat it.
- b-g) That the case of appellant is very much clear and it is directly based on Supreme Court Judgment and comments of the respondents are totally incorrect, also not relevant to the points raised in appeal, and it is admitted facts that reply of respondents is absolutely ambiguous, and claim of appellant cannot be denied by the respondents in the presence of Supreme Court Judgment as referred above, thus the position taken in Para (b-g) in appeal by appellant is reiterated.

It is humbly prayed that this appeal may kindly be accepted along with all back benefits.


Dated 17/10/2016


(Muhammad Jahangir Khan)
Appellant Inperson

Verification

It is verified that contents of instant rejoinder is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal.

Dated 17/10/2016


(Muhammad Jahangir Khan)
Appellant Inperson

Annexure A.H.

(5)

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Rana Bhagwandas, ACJ

Mr. Justice Sardar Muhammad Raza Khan

C.P.L.A No.525 of 2007

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.498 of 2006)

99-1504-1505/07

Rashid Iqbal Khan

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Rashid Iqbal Khan, in person

For the respondents:

Sardar Shaukat Hayat Khan,
Additional Advocate General, NWFP

C.P.L.A No.526 of 2007

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No.499 of 2006)

Muhammad Haroon Qureshi

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Muhammad Haroon Qureshi, in person

For the respondents:

Sardar Shaukat Hayat Khan,
Additional Advocate General, NWFP

Date of hearing:

19.7.2007

Judgment

Rana Bhagwandas, ACJ – Sole grievance of the petitioners before the NWFP Service Tribunal (hereinafter referred to as the Tribunal) appears to be that after induction in BPS-14 as Elementary School Teachers, in terms of NWFP Government Circular dated 7.8.1991 they are entitled to four advance increments in terms of NWFP Government circular letter No.FD(PRC)1-1/89 dated 11.8.1991 on acquiring higher qualification MA/MSc. They have been non-suited by the Tribunal vide judgment dated

ATTESTED

Superintendent
Supreme Court of Pakistan

24.4.2007 on the premise that they had been placed in higher grade i.e. BPS-14 on acquiring BA/BSc Second Division in terms of Finance Division circular letter No.FD(PRC)1-1/89 dated 7.8.1991, therefore, the provisions of circular letter dated 11.8.1991 issued by the Finance Department would not be applicable to teachers. Tribunal has expressed the view that this circular would be applicable only to ministerial staff, as such, the petitioners were not entitled to the relief claimed by them. Petitioners being aggrieved seek leave to appeal.

2. We have heard the petitioners, who argued their case in person whereas learned Additional Advocate General, NWFP has appeared on Court notice issued to the respondents. With the assistance of learned Additional Advocate General, we have examined both the circulars, which do not exclude the teachers in the Education Department from the benefits accruing out of circular letter dated 11.8.1991, as on its plain reading it applies to all civil servants in BPS 1 to 15 serving under the Provincial Government. Para 5 of the said circular provides mechanism for grant of advance increments to officials for possessing/attaining higher educational qualification. Para 5, clause (c) caters for the grant of four advance increments on attaining MA/MSc where prescribed qualification is FA/FSc. It would be seen that the petitioners were placed in BS-14 by reason of having acquired the qualification of BA/BSc, Second Division which is the prescribed qualification for the post of Elementary School Teacher. It is not the case of respondent-Government that the petitioners have already drawn advance increments on acquiring higher qualification of MA/MSc.

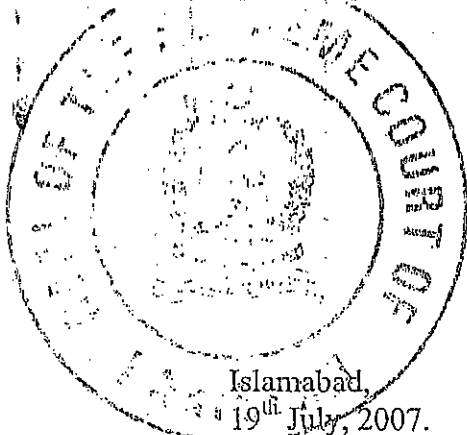
3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in pursuance of the circular letter dated 7.8.1991, which was personal to them, the

ATTESTED

Superintendent
Supreme Court of Pakistan

petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991 provides for the revision of basic pay scales and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra).

3. For the aforesaid facts, circumstances and reasons, we are of the considered view that the Tribunal committed a serious error of law, therefore, the impugned judgment is liable to be set aside. Consequently, we convert these petitions into appeals and, on acceptance, declare that the petitioners would be entitled to four advance increments with effect from the date of qualifying MA/MSc exam.



Not approved for reporting.

Riaz
10/8/07

*Adv. Rana Ghous Ali Khan, Adv.
Adv. Professor Muhammad Raza Khan*

Certified to be true copy

M. J. Khan
28/11/2007

Superintendent
Supreme Court of Pakistan
ISLAMABAD

Date of completion of _____
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 No. of folios: _____
 Requisition Fee Rs. _____
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 Court Fee stamps: _____
 Date of completion of _____
 Copy: _____
 Date of delivery of _____
 Copy: _____
 Compared by: _____

28/7/07

IN THE SUPREME COURT OF PAKISTAN
(REVIEW/ORIGINAL JURISDICTION)

Present:
MR. JUSTICE MUHAMMAD NAWAZ ABBASI
MR. JUSTICE MUHAMMAD QAIM JAN KHAN
MR. JUSTICE MOHAMMAD MOOSA K. LEGHARI

C.R.P. NOs. 216 & 217/2007 in C.P. NOs. 525 & 526/2007
(On review from the judgment dated 19.7.2007 passed in C.A. Nos. 1504 & 1505/2007)

Secretary to Govt. of N.W.F.P. Finance Department, Peshawar
...Petitioner (in both cases)

Versus

Rashid Iqbal Khan and others ... Respondents (in C.R.P. No. 216/07)
Muhammad Haroon Qureshi and others ... Respondents (in C.R.P. No. 217/07)

C.R.O.P. NOs. 66 & 67/2007 IN C.A. NOs. 1504 & 1505/2007

Rashid Iqbal Khan ...Petitioner (in Crl.O.P. No. 66/07)
Muhammad Haroon Qureshi ...Petitioner (in Crl.O.P. No. 67/07)

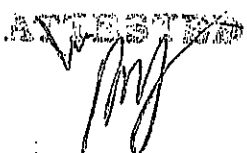
Versus

District Coordination Officer, Abbottabad and others
... Respondents (in both cases)

For the Petitioner : (in C.R.P. Nos. 216 & 217/07)	Sardar Shaukat Hayat, Addl.A.G. N.W.F.P
For the Petitioners : (in Crl.O.P. 66 & 67/07)	In Person
For the Respondents : (in C.R.P. Nos. 216 & 217/07)	N.R.
For the Respondents : (in Crl.O.P. 66 & 67/07)	Sardar Shaukat Hayat, Addl.A.G. N.W.F.P
Date of hearing :	29.1.2008

ORDER

MUHAMMAD NAWAZ ABBASI, J:- The learned Addl. Advocate General has contended that this Court while interpreting the circulars in question has taken a view contrary to the correct legal position according to which private respondents were not entitled to the benefit of advance increments. We are afraid, the learned Addl.A.G. instead of pointing out any mistake of law and fact in the judgment made an attempt to re-open the case on merits. The scope of

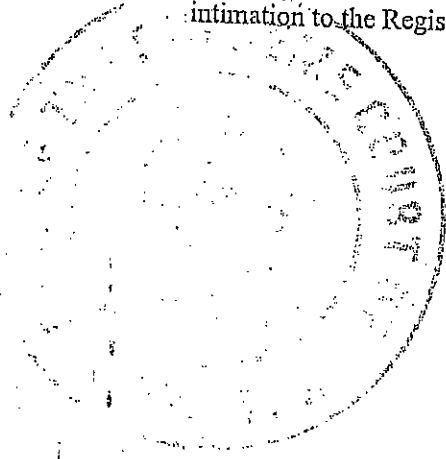

Muhammad Nawaz Abbasi
Justice of the Supreme Court of Pakistan

9

review is very limited and the points already considered in the judgment under review cannot be allowed to be re-agitated in review jurisdiction. These review petitions being without any substance are accordingly dismissed.

Crl.O.P. Nos. 66 & 67/2007

The learned Addl.A.G. has given an undertaking for implementation of the judgment of this Court within a period of two weeks and in view thereof, this criminal original is disposed of with the direction that the judgment should be implemented in letter and spirit within two weeks under intimation to the Registrar of this Court. —



Adl. Muhammad Nawaf Akbari, J.
ad. Muhammad Qasim Farid, J.
ad. Mohammad Masood Leghari, J.

Certified to be a true copy

[Signature]
13/02/08

Islamabad
29.1.2008
(Ejaz Goraya)

12/1/08

562/08

28-1-08

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13-02-2008
25-02-2008

[Signature]

Annexure I,

10

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT
MR JUSTICE NASIR-UL-MULK
MR JUSTICE AMIR HANI MUSLIM

CIVIL APPEAL NO 118-P OF 2009

(On appeal from the judgment of the N.W.F.P.
Service Tribunal, Peshawar, dated 26.1.2009
passed in Appeal No. 1060 of 2008)

Attaullah Khan

Appellant

Versus

Executive District Officer Schools and
Literacy Lakki Marwat and others

Respondents

For the Appellant:

Mr. Waqar Ahmed Seth, AQSC
Mr. Mir Alam Khan, AOR

For the Respondents:

Mr. Naveed Akhtar. Addl. A.G. K.P.K.

Date of Hearing:

16th March, 2011.

JUDGMENT

NASIR-UL-MULK. J.- This appeal by leave of this Court is directed against the judgment of the N.W.F.P. (now K.P.K) service Tribunal dated 26.1.2009 whereby the relief of three advance increments granted to the appellant was declined.

2. The appellant is a school teacher who had acquired additional qualification of M.A. (Pushto) on 26.9.2001. He along with others was granted three advance increments on attaining the additional qualification. It is the grievance of the appellant that the benefit of the pay, as a result of increments was not granted to him. The learned counsel for the appellant has referred to Para 5(iii) of the notification dated 11.8.1991 which states that "*The advance increments shall be allowed at the time of recruitment or acquisition of higher qualification whichever is later. In cases where the employee is already at the*

maximum of the scale, he may be allowed the number of advance increments beyond the maximum of the scale as personal pay to be absorbed at the time of his move-over/promotion." It is contended that the appellant had reached the maximum scale but the advance increments had not been absorbed in the appellant's pay at the time of his promotion from BPS-16 to BPS-17. In the comments filed by the respondents before the Service Tribunal the following plea was taken in para 4 for denying the relief to the appellant:-

"The para is not based on facts. At the time of fixation his pay has been fixed RS. 5490/- on the maximum of BPS-16. In the light of government N.W.F.P. Peshawar Finance Department No. FD-SRV/2-123/2001 dated 23.10.2001 duly verified by Accountant General N.W.F.P. vide his No H.24(110)LM/Vol-11/5255-56 dated 26.12.2003 in similar nature case of Mr. Dil Jan SET GHS Daulat Khel.(Copy Attached) that the three advance increments as a personal pay over and above the maximum of the relevant scale is not admissible to the teaching staff. Hence, he is not entitled for the said benefits."

3. In the notification 23.10.2001 relied upon in the above comments, the finance Department, Government of N.W.F.P. had declined the relief mentioned in para 5(ii) of the notification dated 11.8.1991 to teachers on the ground that it is only for the benefit of government officials and is not admissible as a general principal in case of Basic Pay Scale rules 1983. This view of the Finance Department was contrary to the view point of the Accountant General office. From the past correspondence and para 4 of the comments filed by the respondents the only reason for declining the relief to the appellant was that the benefits of para 5(ii) of the notification of 11.8.1991 was not extendable to teaching staff. The question as to whether the notification dated 11.8.1991 was applicable to the teaching staff of the provincial Government came under discussion before this Court in case of Rashid Iqbal

Khan V District Coordination officer, Abbottabad and others (C.P.L.A. No. 525 of 2007) and it was held that the said notification was applicable to all Provincial civil servants in N.W.F.P. without any exception, including teachers in the Education Department of the Province. This judgment dated 19.7.2007 has therefore, settled the issue that the appellant would be entitled to the benefit of para 5(ii) of the notification dated 11.8.1991. That notification clearly declares that an employee who acquires additional qualification but has reached the maximum of the scale would be granted the advance increments beyond the maximum scale as personal pay that would be absorbed in his pay at the time of his promotion. The Tribunal has not examined the case from the above perspective. The appeal is, therefore allowed the impugned judgment is set aside and the appellant is granted the relief prayed for in the appeal filed by appellant before the N.W.F.P. Service Tribunal.

Sd/-

MR NASIR-UL-MULK J

Sd/-

MR AMIR HANI MUSLIM J

Peshawar

March, 16. 2011