

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 16159/2020

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

Mr. Gul Rait, Additional Private Secretary (BPS-19), Office of the Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

...
(Appellant)

Versus

1. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

...

For appellant

Mr. Muhammad Jan
District Attorney

...

For respondents

Date of Institution.....18.12.2020

Date of Hearing.....29.11.2023

Date of Decision.....29.11.2023

CONSOLIDATED JUDGEMENT

RASHIDA BANO, MEMBER (J):The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned inaction of the respondents by not allowing the Executive Allowance/Schedule Post Allowance @ 1.5 of initial basic pay scale 2017 to the appellant w.e.f 02.02.2018 and against the impugned appellate order dated 29.07.2020 whereby the departmental appeal of the appellant had been rejected.



2. This judgment shall dispose of the instant service appeal as well as connected Service Appeal No. 16160/2020 titled "Mr. Sufaid Gul, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa", Service Appeal No. 16161/2020 titled "Mr. Ikram Ul Haq, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa", Service Appeal No. 16162/2020 titled "Mr. Syed Arif Ullah Shah, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa" Service Appeal No. 16163/2020 titled "Mr. Badshah Khan, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa", Service Appeal No. 16164/2020 titled "Mr. Siraj Ud Din, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa", Service Appeal No. 16165/2020 titled "Mr. Muhammad Din, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa" Service Appeal No. 16166/2020 titled "Mr. Dil Nawaz Khan, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa", Service Appeal No. 16167/2020 titled "Mr. Naikdar Ali, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa" Service Appeal No. 16168/2020 titled "Mr. Riaz Ullah, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa", Service Appeal No. 16169/2020 titled "Mr. Nisar Muhammad Khan, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa" Service Appeal No. 16170/2020 titled "Mr. Abdul Wase, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa", Service Appeal No. 16171/2020 titled "Mr. Tila Khan, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa", Service Appeal No. 16172/2020 titled "Mr. Haji Muhammad, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa" Service Appeal No. 16173/2020 titled "Mr. Nasir Khan, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa" Service Appeal No. 16174/2020 titled "Mr. Amin Khan, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa" Service Appeal No. 16175/2020 titled "Mr. Jamroz Khan, Private Secretary (BPS-17)



Vs.Government of Khyber Pakhtunkhwa”,Service Appeal No. 16176/2020 titled “Mr. Habib Ul Hasan, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”,Service Appeal No. 16177/2020 titled “Mr. Muhammad Rafique, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”,Service Appeal No. 16178/2020 titled “Mr. Saeed Pervez, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”Service Appeal No. 16179/2020 titled “Mr. Mazhar Ali, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”Service Appeal No. 16180/2020 titled “Mr. Mir Shahbaz Khan, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”,Service Appeal No. 16181/2020 titled “Mr. Qaisar Khan, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”,Service Appeal No. 16182/2020 titled “Mr. Syed Irfan Shah, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”Service Appeal No. 16183/2020 titled “Mr. Nooran Shah, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”Service Appeal No. 16184/2020 titled “Mr. Irshad Ali, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”Service Appeal No. 16185/2020 titled “Mr. Ahmad Hussain, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”, Service Appeal No. 16187/2020 titled “Mr. Muhammad Iqbal Swati, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”,Service Appeal No. 16188/2020 titled “Mr. Khalil Ur Rehman, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”,Service Appeal No. 16189/2020 titled “Mr. Jamshed Iqbal, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”Service Appeal No. 16190/2020 titled “Mr. Momin Khan, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”,Service Appeal No. 16191/2020 titled “Mr. Muhammad Javed, Private Secretary (BPS-17) Vs.Government of Khyber Pakhtunkhwa”Service Appeal No. 16192/2020 titled “Mr. Hazrat Dayan, Private Secretary (BPS-17)



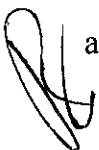
Vs. Government of Khyber Pakhtunkhwa” Service Appeal No. 16193/2020 titled “Mr. Muhammad Ibrahim, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa”, Service Appeal No. 16194/2020 titled “Mr. Rafi Ullah, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa”, Service Appeal No. 16195/2020 titled “Mr. Fazli Haq, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa”, Service Appeal No. 16421/2020 titled “Mr. Fazle Rahim, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa”, Service Appeal No. 16422/2020 titled “Mr. Ali Farman, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa” and Service Appeal No. 2821/2021 titled “Mr. Rahmat Ullah, Private Secretary (BPS-17) Vs. Government of Khyber Pakhtunkhwa” as similar question of law and facts are involved in both the appeals.

3. Brief facts of the case, as provided in the memorandum of appeal, are that the appellant is serving in the Civil Secretariat, Khyber Pakhtunkhwa, Peshawar as Additional Private Secretary (BPS-17) and his services are regulated by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989 read with Khyber Pakhtunkhwa Secretariat Private Secretaries Rules 2012. During Budget Session 2016-17, the Chief Minister announced to give relief package to civil servants working in BPS-17 and above. PCS officers association initiated a case for granting of Executive Allowance and a summary for Chief Minister was moved in which financial implication was worked out and it was proposed to place the matter before the Cabinet Committee. The Committee deliberated upon the matter and resultantly another summary was forwarded to the Chief Minister recommending Executive Allowance for PAS, PCS and PMS cadres. The Chief Minister approved the proposal with an addition, “all BPS-17 and above officers of Private Secretaries and planning cadres working

in the Civil Secretariat Khyber Pakhtunkhwa may also be included.” In a meeting held on 27.12.2017, the Chief Minister directed to resubmit the case of Executive Allowance for PAS, PMS and PCS officers before the Cabinet for consideration. Accordingly a case was submitted again and after detailed deliberation in its meetings, the Provincial Cabinet in its meeting held on 25.01.2018 approved the Executive Allowance for PAS, PCS and PMS officers in Khyber Pakhtunkhwa working against schedule posts of the province, in pursuance of which order dated 02.02.2018 was issued by the Finance Department. Nomenclature of Executive Allowance was later on changed to Schedule Posts Allowance in a cabinet meeting dated 24.05.2018. In the order dated 02.02.2018, the Private Secretaries (appellant) were left out. Feeling aggrieved, they preferred a departmental appeal dated 22.02.2018, but it was not responded till the expiry of statutory period of 90 days. The appellant alongwith his colleagues filed a writ petition No. 3698/2018 in the Honorable Peshawar High Court, which was disposed off vide judgement dated 10.03.2020 by saying:

“We without going to the merits of the case, are of the view that let the matter be referred to the Chief Secretary, Govt of Khyber Pakhtunkhwa, on the analogy of other writ petitions, referred to by this Court, with the direction to look into the matter and either pay the said allowance to all the eligible employees or none. The matter be decided within a period of three months, positively.”


When the matter was not decided, a COC petition was preferred on which the apex court passed its judgement dated 19.11.2020 with the direction to the appellant that they may avail remedy that may be permissible to them in accordance with the law. Hence this service appeal.



4. Respondents were put on notice who submitted written replies/ comments on the appeal. We have heard the learned counsel for the appellant as well as the Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

5. The learned counsel for the appellant presented the case in detail and argued that the respondents had allowed the said allowance to those Personal Assistants (BPS-16) who were working as Section Officers or Private Secretaries to Provincial Ministers in their own pay and scale while the same had been denied to the appellant cadre officers of BPS-17 and above. He further contended that the appellant had the right of equal treatment and denying it was unconstitutional and clear violation of his fundamental rights. He referred to Article 38(e) of the Constitution of Islamic Republic of Pakistan which stated that the state was bound to reduce disparity in the income and earning of individuals including persons in the services of the Federation.

6. The learned District Attorney contended that the Executive Allowance, now Schedule Post Allowance, was admissible to PAS, PCS and PMS officers as approved by the competent authority in the cabinet meeting held on 25.01.2018 on the grounds that the officers of those cadres while posted outside Secretariat on schedule posts lost the facility of 30% Special Allowance and for that very purpose the same facility had been approved by the government to compensate those officers. The allowance was allowed keeping in view the administrative and policy making duty performed by them both in field and Secretariat. He further added that PAS, PCS and PMS officers were working on their original pay and scales since long and did not avail the benefit of even one step up-gradation or pay revision throughout their service life which had been granted to all other cadres. He argued that Private Secretaries cadre had been twice upgraded. On the point of reducing disparity in the income and earning of



individuals based on Article 38(e) of the Constitution of Islamic Republic of Pakistan, he argued that it could not be disagreed, however, employees of different cadres having different sets of job descriptions and professional responsibilities could not be extended the same financial benefits as it was against the course of natural justice.

7. After going through the record available before us and hearing the learned counsels, it is clear that Executive Allowance/Schedule Post Allowance had been allowed by the Government of Khyber Pakhtunkhwa based on a report of special cabinet committee which held a series of meetings and arrived at the recommendations according to which the said allowance was to be admissible to all PAS, PCS and PMS cadre officers, subject to certain conditions. As far as argument of the appellant that not allowing the said allowance leads to violation of Article 4 and 25 of Constitution is concerned, Hon'ble Peshawar High Court in a judgement titled "Syed Shahin Shah Vs the Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and five others" (2021 PLC (C.S) 1589) has relied on PLD 2010 SC 265 wherein the apex court while interpreting Articles 4 and 25 in Dr. Mobashir Hassan's case has held:

"Article 4 of the Constitution commands that all the citizens without any discrimination shall be dealt with in accordance with law, so enforcement of the law leaves no room for creating any distinction between the citizens, except a particular class, on the basis of the intelligible differentia--- "Intelligible differentia" means in the case of the law differentiating between two sets of the people or objects, all such differentiations should be easily understood as logical and lucid and it should not be artificial or contrived ---Intelligible differentia distinguishes persons or things from the other persons or things, who have been left out. Art.25 ---



Equality of citizens--- Reasonable classification--- Principles. In order to make a classification reasonable, it should be based: (a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out; (b) that the differentia must have rational nexus to the object sought to be achieved by such classification. Any classification which is arbitrary and which is made without any basis is no classification and a proper classification must always rest upon some difference and must bear a reasonable and just relation to the things in respect of which it is proposed."


8. It merits mention here that Government vide notification dated 27.11.2019 extend Special/Secretariat Allowance from 30% to 50% which was further enhance/revise vide notification dated 11.07.2023 from 50% to 100% of the basic pay to the employees of Secretariat including the appellant. Government also through another notification sanctioned special allowance 2021- 20% of the initial basic scale of 2017 to the Civil Servants and appellant also beneficiary of the same. Furthermore, government vide notification dated 12.04.2022 sanctioned disparity reduction allowance 2022 at the rate of 15% to the Civil Servants of Provincial Government including appellant and all these allowances are not allowed to the holder of schedule post officers, who are getting executive allowance. So in such a situation in our humble view appellants are getting almost allowances equal to the schedule post allowance.

9. In view of the facts narrated above, we have arrived at the conclusion that the Executive Allowance/Schedule Post Allowance is specific for all the posts mentioned in the schedule annexed with the Khyber Pakhtunkhwa Provincial Management Service Rules, 2007. As the posts of Private Secretaries and Additional Private Secretaries are not mentioned in that schedule, therefore,

they do not qualify for receiving the said allowance, unless held entitled through another notification by the Government. Their contention that Private Secretaries attached with the Ministers are getting the allowance and, therefore, they are being discriminated, is not tenable because the Private Secretaries to Ministers have been held entitled by the Government by amending the Schedule while the schedule has not been amended to benefit the appellants as appellants are getting almost allowances equal to the schedule post allowance. Hence, the appeal in hand is dismissed. Costs to follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of November, 2023.*


(MOHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

03rd August, 2023

01. Counsel for the appellant present. Mr. Fazal Shah Mohmand, Addl. Advocate General alongwith Muhammad Riaz, Superintendent for the respondents present.

02. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Last opportunity is granted. To come up for arguments on 29.11.2023 before the D.B. Parcha Peshi given to the parties.

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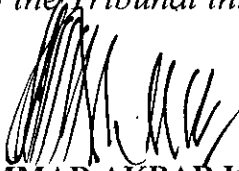

(FAREEHA PAUL)
Member(E)

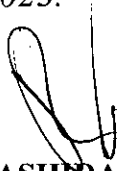

(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S

ORDER

- 29.11.2023 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Mr. Muhammad Riaz, Superintendent and Mr. Hashmat Ullah, Superintendent for the respondents present.
2. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed. Costs to follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)