

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 216/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN  
MISS FAREEHA PAUL ... MEMBER(E)

Zaheer ud Din S/O Muhammad Saeed, SDEO (M), Khar Bajaur.  
.....(*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary E&SE Department Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
3. Director E&SE, Khyber Pakhtunkhwa, Peshawar.
4. Accountant General Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer, Bajaur. ....(*Respondents*)

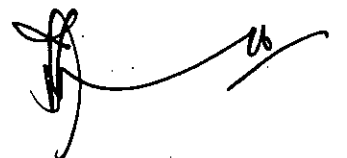
Mr. Muhammad Ayub Khan Shinwari,  
Advocate ... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney ... For respondents

Date of Institution.....	19.12.2022
Date of Hearing.....	23.02.2024
Date of Decision.....	23.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, with the prayer that on acceptance of the appeal, the impugned order dated 19.11.2022 be declared as against the law and ineffective upon the rights of the appellant and the act of respondents of withdrawing the benefits of BPS- 17 (Personal) from him be declared as against the law and without lawful authority and the respondents might further be directed to grant and fix his pay and allowance in BPS- 17 with effect from 05.05.2011 with arrears and all other back benefits or respondents be directed to revert the



appellant back to Teaching Cadre w.e.f. 05.05.2011 and be granted same perks and privileges as his colleagues were getting who were appointed with him as SET, alongwith any other relief which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as SST (BPS- 16) vide order dated 12.07.1999 in the respondent department. After rendering ten years continuous regular service as SST and ADO in BPS- 16, he was awarded BPS- 17 (Personal) on the recommendation of the Departmental Promotion Committee vide notification dated 25.05.2010. On the bifurcation of the Teaching Cadre and Management Cadre in the respondent department, few posts of ADEO (M) (BPS- 16) were advertised. The appellant being eligible, applied for it through proper channel, qualified the test and interview, and was appointed against the post of ADEO (M) vide notification dated 05.05.2011. At the time of appointment against the post of ADEO (M), the appellant was drawing his pay and allowances in BPS- 17, which was awarded to him vide notification dated 25.05.2010. He, after appointment against the post of ADEO (M), was under legitimate expectancy that he would be granted pay protection and would be allowed to draw pay and allowances in BPS- 17, but respondent No. 4 issued revised pay slip and fixed his pay in BPS- 16 instead of BPS- 17. The Office of respondent No. 3 had time and again requested the respondent No. 4 to allow the appellant to get pay and allowances of BPS- 17 but to no avail. Feeling aggrieved, he approached the respondents by filing the departmental appeal, which was not decided. After the lapse of the statutory time for deciding the



departmental appeal, he filed Service Appeal No. 11407/2020 before the Tribunal and vide judgment dated 28.10.2021, the case was remitted back to the respondent No. 1 with the directions to take up the case with respondent No. 2 i.e. Finance Department, and thereafter decide the departmental appeal of the appellant. In pursuance of the judgment, the respondents issued the impugned order dated 19.11.2022, received by the appellant on 26.11.2022; hence the instant service appeal.

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

4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant had not been treated in accordance with law and the impugned order was ineffective upon his rights. He further argued that other colleagues of the appellant who were granted BPS- 17 (Personal) alongwith the appellant through the same notification were getting its benefits, while he had been discriminated. He further argued that the treatment meted out to the appellant was against the spirit of F.R 22 as well as judgment of the Tribunal. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that award of BPS- 17 (Personal) to the appellant vide notification dated 25.05.2010, under the upgradation policy, was against the post of SST in BPS- 16 Teaching Cadre, whereas, the appellant had joined the post of ADEO in BS- 16 Management Cadre




on 05.05.2011 and hence, the benefits of upgradation in BPS- 17 (Personal) were withdrawn from him under the rules due to the change of cadre from SST to ADEO by him in the respondent department. He further argued that against the order dated 19.11.2022, no departmental appeal had been filed by the appellant till the date of hearing and hence the appeal was not maintainable. He requested that the appeal might be dismissed.

6. The appellant has sought fixation of pay and allowances in BS- 17 with effect from 05.05.2011 alongwith arrears. Arguments and record shows that he was first appointed as SST (BS- 16) in 1999 and in 2010, he was awarded personal upgradation in BS- 17. When the teaching and management cadres were bifurcated in the Elementary and Secondary Education Department, he got selected through the Khyber Pakhtunkhwa Public Service Commission to the post of ADEO (M) BS- 16 in 2011. At that time he was drawing salary in BS- 17, but when he got selected in BS- 16, his salary was fixed in BS- 16 while his last drawn pay was protected, as stated by the learned counsel for the appellant. It is extremely clear that the appellant was given personal upgradation in BS- 17, while he was serving the respondent department in its teaching cadre. Upon bifurcation of cadres, he applied for initial appointment against a post of management cadre in BS- 16 on his own sweet will. Under the rules, pay of a civil servant is protected and the same fact has been admitted by the counsel for the appellant that his last drawn pay in BS- 17 (Personal) has been given protection. As regards the fixation of pay in BS- 17, the question is how can the pay of a government servant/civil servant, who gets appointed in BS- 16, be fixed in BS- 17? No rule could be identified by the counsel for the

appellant under which his pay could be fixed in BS- 17, while his appointment was made in BS- 16. There is no second opinion that pay of a government servant/civil servant is fixed in the scale in which he is appointed, and to the same the learned counsel did not differ but insisted to allow the same on humanitarian grounds as the colleagues of the appellant, in teaching cadre, had been promoted to BS- 18 and 19. In our opinion, there is no provision in the rules for such fixation of pay and the appellant had been granted the due benefit of pay protection.

7. In view of the above discussion, the appeal is dismissed being groundless. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23<sup>rd</sup> day of February, 2024.*

  
(FARZEHA PAUL)  
Member (I)

*\*FazleSubhan, P.S\**

  
(KALIM ARSHAD KHAN)  
Chairman


SA 216/2023

Order

23<sup>rd</sup> Feb. 2024 01. Muhammad Ayub Khan Shinwari, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal is dismissed being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23<sup>rd</sup> day of February, 2024.*

  
(FARAHIA PAUL)  
Member (I)

  
(KALIM ARSHAD KHAN)  
Chairman

\*Fazal Subhan PS\*