

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 634/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Syed Shahin Shah (Deputy Director Finance/Accounts) C/O Directorate  
General LG & RD, Plot No. 20, Phase-V, Hayatabad, Peshawar.  
.... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
  2. The Government of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat Peshawar.
  3. The Government of Khyber Pakhtunkhwa through Secretary Establishment Department, Civil Secretariat Peshawar.
  4. The Government of Khyber Pakhtunkhwa through Secretary Local Government, Civil Secretariat Peshawar.
- .... (Respondents)

Syed Shahin Shah ... In person

Mr. Muhammad Jan  
District Attorney ... For respondents

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Date of Institution.....25.04.2022  
Date of Hearing.....14.02.2024  
Date of Decision.....14.02.2024

JUDGMENT

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

**“On acceptance of this service appeal by directing the respondents to grant the Executive Allowance at the rate of 1.5 of the notified basic pay, 2017 w.e.f 02.02.2018 and 150% such Executive allowance w.e.f 01.07.2021 as well as**



**30% Directorate Allowance w.e.f 01.01.2018 on the analogy of Secretariat Allowance and 10% utility allowance w.e.f 01.01.2013 and declaring the non-action of the respondents under the government as unconstitutional, illegal, void ab-initio, malicious, discriminatory and against the fundamental rights of the appellant in the light of the above mentioned judgments.”**

2. Brief facts of the case, as given in the memoranda of appeal are that the appellant was appointed through Khyber Pakhtunkhwa Public Service Commission and was working as Deputy Director Finance/Accounts in the Directorate General of Local Government & Rural Development, Department That the officers of other department i.e. Doctors, PMS/PCS, Engineers, IT Professionals, serving under the Government of Khyber Pakhtunkhwa were getting technical/executive, health professional allowance etc. The appellant being on the same footing with the above officers, filed representation for grant of such allowance, but the same was filed, hence, the instant service appeal.
3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.
4. Appellant argued that he was not treated in accordance with law and rules and the respondents violated Article 4, 10-A, 25, 27 and 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that provincial government did not treat him on equal basis under the constitution and failed to follow the principles of policy to increase the pay and remove the



disparity of pay among the employees.

5. Conversely, learned District Attorney for the respondents contended that the appellant has been treated in accordance with rules and has been equally treated as per rules/policy and there was no violation of his right. He further contended that Executive Allowance is allowed to those employees who are working in Provincial Management Service and Pakistan Administrative Service whereas the appellant is neither PMS Officer nor PAS Officer to claim such allowance, as the same allowance is not admissible to employees of attached formation.

6. Perusal of record reveals that appellant was appointed upon recommendation of the Khyber Pakhtunkhwa Public Service Commission on the basis of Master Degree in the attached formation of the Local Government Election and Rural Development Department Khyber Pakhtunkhwa. The service structure of various departments of the Khyber Pakhtunkhwa, including the appellant and PMS Officers is governed and regulated by the Khyber Pakhtunkhwa Civil Servant Act, 1973 and appellant also went through the same process of recruitment in BPS-17 like PMS officers in accordance with PMS Rules 2007. Rule-2(h) of the Rules of Business 1985 defines Department as a self-contained Administrative Unit in the Secretariat responsible for the conduct of business of the Government in a distinct and specified sphere and is declared as such by the Government. Similarly, the Attached Department has also been defined under Rule-2(b) of the Rules of Business as:

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

Rule-3(3) read with Schedule-II of the Rules of Business, provides for the distribution of business of the Provincial Government amongst the

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


8. Main contention of the appellants is that he is entitled for executive allowance at the rate of 1.5% of initial basic pay because he entered into service after going through the same procedure and method of recruitment, through which PCS and PMS officers are recruited i.e advertisement by the Public Service Commission of the post and competitive written examination. Appellant also alleged that he is also professional like other technical officers. The other contention is that he was discriminated and was not equally treated as almost all the cadre/department/employees and officers were allowed allowances but the appellant department is deprived from it, which created disparity and injustice.

9. Scheduled post by the government is one which is specifically mentioned in schedule appended with the PMS Rules, 2007. The post of the appellant is

not mentioned in it and appellant is working in Local Government Directorate, which is an attached formation of the Local Government Department.

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 post of the appellant is not mentioned in that schedule and appellant is not also working in Establishment Department, therefore, he does not qualify for receiving the said allowance, unless held entitled through another notification by the Government. Hence, the appeal in hand is dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14<sup>th</sup> day of February, 2024.*

  
(FAREEHHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

31<sup>st</sup> Oct, 2023

1. Appellant in person present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Appellant requested for adjournment for adjournment on the ground that he has not prepare the brief. Absolute last chance is given. To come up for arguments on 14.02.2024 before D.B. P.P given to the parties.

SCANNED  
KPBT  
Peshawar

(Muhammad Akbar Khan)  
Member (E)

(Rashida Bano)  
Member (J)

\*KaleemUllah

ORDER

14.02.2024

1. Learned counsel for the appellant. Mr. Muhammad Jan, District Attorney alongwith Mr. Hashmat Ullah, Superintendent the respondents present.

2. Vide our detailed judgement of today placed on file, the appeal in hand is dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14<sup>th</sup> day of February, 2024.*

(FAREHA PAUL)  
Member (E)

(RASHIDA BANO)  
Member (J)

\*Kaleemullah