


FORM OF ORDERSHEET

Court of _____

Misc. application No. 433 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	31/05/2024	<p>The Misc. application in Appeal No. 1435/2022 submitted today by Sufyan Haqani through Mr. Rehmat Khan Kundi Advocate. It is fixed for hearing before Division Bench at Peshawar on 03.06.2024. Original file be requisitioned. Parcha Peshi given to the counsel for the applicant.</p> <p style="text-align: right;"> REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title:

Sufyan Hassan

v/s:

Govt of KP & other

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	x	✓
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether Index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26	Whether copies of comments/reply/rejoinder submitted? On _____	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Rahmat Khan Kundi

Signature:

[Signature]

Dated:

23/05/2024

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

Misc Application No. 433 /2024

In

Service Appeal No: 1435 /2022

Sufyan Haqani (Director Peshawar Region) Excise, Taxation &
Narcotic Control Department Khyber Pakhtunkhwa, Peshawar.
..... (Petitioners)

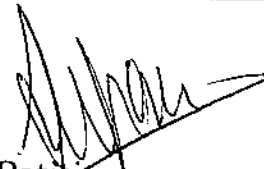
VERSUS

Govt. of KP through Chief Secretary & Other.....(Respondent)

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Application		1-2
2.	Affidavit		3
3.	Copy service Appeal No. 1435 /2022	A	4-14
4.	Copy of Judgment dated 15.11.2023	B	15-22
5.	Wakalatnama		23

Dated: 23.05.2024


Petitioner

Through Counsel


Rahmat Khan Kundi
Advocate High Court, Peshawar

(1)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

MISC Application No. 433 /2024

In

Service Appeal No. 1435/2022

Sufyan Haqani (Director Peshawar Region) Excise, Taxation &
Narcotic Control Department Khyber Pakhtunkhwa, Peshawar.
..... (Petitioner)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Govt. of KP, Civil Secretariat, Peshawar.
2. The Finance Department, Govt. of KP through Secretary Finance, Govt. of KP, Civil Secretariat, Peshawar.
3. The Excise, Taxation and Narcotics Control Department, Govt of KP through Secretary Excise, Taxation and Narcotics Control Department, Civil Secretariat, Peshawar.
4. Director General, Excise, taxation and Narcotics Control department.
.....(Respondent)

**APPLICATION FOR CORRECTION OF CLERICAL
MISTAKES IN CONSOLIDATED JUDGMENT DATED
15.11.2023 OF SERVICE APPEAL NO. 1435/2022
WHEREIN 150% ALLOWANCE IN FAVOUR OF THE
PETITIONER WAS ALLOWED, BUT INSTEAD OF
150% ALLOWANCE INADVERTENTLY/ MISTAKENLY
1.5% ALLOWANCE AND INSTEAD OF GOVERNMENT
EXCHEQUER MISTAKENLY GOVERNMENT
EXCHANGE WERE WRITTEN/MENTIONED IN THE
JUDGMENT DUE TO CLERICAL MISRTAKES.**

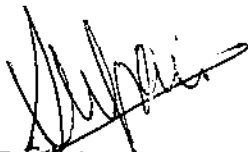
Respectfully Sheweth:

1. **That** the above mentioned service appeal has already been decided by this Hon'ble court vide judgment dated 15.11.2023, but there are some clerical mistakes which is liable to be rectified.


(2)

2. That there are clerical mistakes in consolidated judgment dated 15.11.2023 of service appeal no. 1435/2022 wherein 150% allowance in favour of the petitioner was allowed, but instead of 150% allowance inadvertently / mistakenly 1.5% allowance and instead of government exchequer mistakenly government exchange was written/mentioned in the judgment due to clerical mistakes, which need to be rectified. (Copy of Service Appeal No. 1435/2022 and Judgment dated 15.11.2023 is attached as Annexure A & B)
3. That there is no legal bar on acceptance of this application.

It is, therefore, most humbly prayed that on acceptance of this application, the above mentioned clerical mistakes in the consolidated judgment dated 15.11.2023 of service appeal No. 1435 may kindly be corrected/ rectified in the fair administration of justice.


Petitioner

Through


Rahmat Khan Kundi
Advocate High Court,
Peshawar.

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**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Application No. _____/2024
In
Service Appeal No. 1435/2022

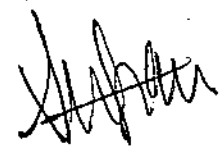
Sufyan Haqani (Director Peshawar Region) Excise, Taxation &
Narcotic Control Department Khyber Pakhtunkhwa, Peshawar.
..... (Petitioners)

VERSUS

Govt. of KP through Chief Secretary & Other.....(Respondent)

AFFIDAVIT

I, **Sufyan Haqani** (Director Peshawar Region) Excise, Taxation
& Narcotic Control Department Khyber Pakhtunkhwa,
Peshawar, do hereby solemnly affirm and declare, that the
contents of the **Application** are true and correct to the best of
my knowledge and belief and nothing has been concealed from
this Hon'ble Court.



Deponent

CNIC No. 17301-8478627-1
Cell No. 0315-5588814

Identified By:



Rahmat Khan Kundi
Advocate High Court (S)

(9)

Annexed
"A"



IN THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 1435 /2022

Sufian Haqqani (Director Peshawar Region) Excise, Taxation & Narcotics
Control Department.

.....Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. The Finance Department, Government of Khyber Pakhtunkhwa.
Through Secretary Finance, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
3. The Excise, Taxation & Narcotics Control Department, Government of
Khyber Pakhtunkhwa.
Through Secretary Excise, Taxation & Narcotics Control Department,
Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
4. Director General Excise, Taxation & Narcotics Control Department,

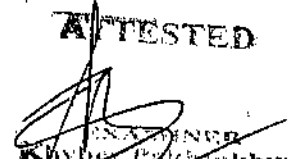
..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST
THE ORDERS NO.SOSR-IV/FD/1-13/2021/E&TD DATED
15.08.2022, WHEREBY ILLEGALLY AND UNLAWFULLY, THE
APPELLANT HAS BEEN DEPRIVED OF THE EXECUTIVE
ALLOWANCE @150% AND DIRECTIONS OF RECOVERY ARE
ALSO GIVEN ILLEGALLY AND WITHOUT LAWFUL
AUTHORITY BY THE RESPONDENTS.

Respectfully Submitted:

The Appellant is working against the designations mentioned in the heading of the petition in the Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department. The Appellant is a Civil Servant, and is before this Honorable Tribunal for the redress of his grievance in respect of the illegal actions of the respondents in taking away the due right of Executive Allowance @150% from the appellant in negation of the law vide NO.SOSR-IV/FD/1-13/2021/E&TD dated 15.08.2022. He thus approach this honorable tribunal for the redress of his grievance in respect of the afore-mentioned illegal acts, with the Facts and Grounds enumerated hereinafter.

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Brief Facts:

1. That the Appellant is a bonafide law-abiding resident of Khyber Pakhtunkhwa, and being citizen of Pakistan, entitled to all the constitutional guarantees including but not limited to the fundamental rights of life, freedom of trade, due process as well as the right of non-discrimination. He is an officer of the Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department and were duly appointed pursuant to advertisement, competitive examinations, psychological evaluation, and interviews.

Copies of the appointment order is Annex-A.

2. That the Respondents regulate the services of all the Civil Servants including the Appellants under the provisions of the Constitution of the Islamic Republic of Pakistan, 1973 whereunder the Khyber Pakhtunkhwa Civil Servants Act 1973 is enacted. The said Act regulates the appointment of persons and their terms and conditions of service in relation to the service of Khyber Pakhtunkhwa. That the service structures of various departments of the Government of Khyber Pakhtunkhwa are dealt with under Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.
3. That as per the Khyber Pakhtunkhwa PCS Rules 1997, Extra Assistant Commissioners (EACs), Excise and Taxation Officers (ETO), Section Officers (SO) and Deputy Superintendent of Police (DSP) were the groups selected through combined Competitive examination. Subsequently the DSPs were encadared in Police Service of Pakistan (PSP), the SOs and EACs were encadared in Provincial Management Service (PMS) leaving aside the ETO's, who are ironically still appointed through the PMS Syllabus appended to the PMS Rules 2007 in its Schedule. That it is also imperative to note that the initial recruitment in Excise, Taxation & Narcotics Control Department as Assistant Excise & Taxation Officer in BPS-17 is done through competitive examination under the PMS Rules, 2007. The advertisement, syllabus, examination, interviews, psychological evaluation and even trainings are the same.
4. That the Constitution has conferred upon the Provincial Government the powers to make Rules under Article-139(3) for the allocation and transaction of business of the Provincial Government. While exercising that power the Government of Khyber Pakhtunkhwa has framed the Khyber Pakhtunkhwa Government Rules of Business-1985 ("Rules of Business").

"Rule-2(h) of the Rules of Business 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 declare 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.

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Peshawar

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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.

5. That the appellant is Officer of the Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department, Government of Khyber Pakhtunkhwa serving in BPS-18 and above. They are Provincial Civil Servants within the meaning of Section-2(1)(b) of the Act of 1973. The Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department under the Rules of Business is implementing tool of the Administrative Department in as much as all the Policies, Rules and Regulations of the Administrative Department are being implemented through the Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department and its Officers i.e., Appellants.
6. That for a variety of reasons including high rate of inflation, depreciation, cost increase, high taxation rate, the Provincial Government through Finance Department sanctioned various allowances i.e. Executive/Performance/Technical/Professional Allowances on various scales per month to the Civil Servants belonging to various cadres. Consequently, vide Notification dated 02.02.2018, the PAS/PCS/PMS Officers in BPS-17 to BPS-21 working on scheduled posts of the Establishment and Administration Department were allowed Executive Allowance to the tune of 1.5 of the initial Basic Pay per month. This was followed by another Notification dated 02.08.2018 whereby another allowance called the Scheduled Post Allowance was allowed to Police Officers of Police Department (an Attached Department of Home & Tribal Affairs Department) serving in BPS-17 to BPS-21 @1.5 of the initial basic pay per month by the Finance Department, Government of Khyber Pakhtunkhwa. Again vide Notification dated 19.10.2018, the Finance Department, Government of Khyber Pakhtunkhwa sanctioned Technical Allowance to Engineers (Attached Department Officers) serving in only four Departments in BPS-17 to BPS-20 @1.5 of the initial basis pay. Similarly, by means of another Notification dated 11.11.2019, the Planning Cadre Officers serving in BPS-17 to BPS 20 working against the sanction strength of the P&D Department were sanctioned Planning Performance Allowance to the tune of 1.5 of the Basic Pay. Likewise, the Doctors (Attached Department Officers) were also allowed similar Allowances on various scales called the Health Professional Allowance as is evident from the Notification dated 07.01.2016.

Copy of the Notifications are Annex-B

7. That on 07-07-2021 Executive Allowance @150% was granted by the Provincial Government to PAS, PCS, PMS officers. The appellant being PCS qualified officers was started with the payments of the Allowance, without the appellant ever applying for the allowance. This continued without any gap, however out of the blue the allowance was stopped in May 2022, whereafter on 01-06-2022, the appellant made a due representation.

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Copy of the Notification dated 07-07-2022 is Annex-

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Copy of the representation is Annex-D.

8. That comments of the Administrative Department were asked by the Finance Department on the representation of the appellants, which were duly furnished vide No. SO(Admn)/E&T/1-82/2020 dated 17-06-2022 and it in unequivocal terms agreed with the plea of the appellants. The comments also mention that the department is a revenue generation source and therefore entitled to the allowance on that score also.

Copy of the comments is Annex-E.

Copy of the 5 years recovery chart is Annex-E/1.

9. That the Finance Department vide 15-08-2022 (NO.SOSR-IV/FD/1-13/2021/E&TD) regretted the said representation despite the favorable comments of the Excise Department. The said regret was received in the Excise Department on 17-08-2022 and delivered to the appellants on 19-08-2022. With the regret a heavy financial disparity has been caused due to the allowances mentioned above. Also, the regret letter concedes that the allowance was granted due to "irregularity", which is preposterous. The appellant never applied for it, rather were given the allowance based on the fact that they have "literally" the same set standards of induction rules/advertisement/interviews/training to the PMS Counterparts. Also, they are a revenue generation source, which entitles them to the Executive Allowance and by no means disentitles them to the same, and in no space "made them liable" for recovery.

Copy of the regret is Annex-F.

10. That a summarized picture of Allowances offered to various civil servants under the Act of 1973 is tabulated below to highlight the position before the Hon'ble Tribunal:-

S, No	Appointment Terms & Conditions as per the Civil Servants Act, 1973	Allowances	Strength
1	Pakistan Administrative services(PAS), Provincial Management Services (PMS) (Formerly PCS-EG/PCS-SG)	Performance/ Executive Allowance equal to 150%	1500
2	Provincial Planning Services PPS (former Non-Cadre Service)	Planning Performance Allowance equal to 1.5 Basic Pay/Month	300+

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3	Engineers of C&W, P&I, LG&RDD and Irrigation Departments	Technical Allowance equal to 1.5 Basic Pay/Month	600+
4	Police Officers BPS-17 to BPS-21 of the Police Department	Scheduled Post Allowance equal to 1.5 of the initial Basic Pay/Month	650+
5	ETO's	Allowance @150% discontinued	18

Thus the Appellants have been highly discriminated in the matters of financial benefits.

11. That it is bearing in mind the afore-mentioned that the Appellant being aggrieved of discriminatory treatment meted out to Appellants and having no other adequate and efficacious remedy after the regret, file this appeal inter-alia on the following grounds:

Grounds:

- a. Because Fundamental Rights of the Appellant specifically those mentioned in Article 4, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan 1973 are being violated by the Respondents in taking away the due right of allowance from the Appellants, while it is extended to others. The Honorable Supreme Court of Pakistan in 1991 SCMR 1041 (I.A. Shirwani Case) clearly bestowed the enforcement of the fundamental rights on the Tribunal.
- b. Because Article 38(c) of the Constitution of Islamic Republic of Pakistan, 1973 is specifically being made redundant through the acts of the respondents who have made the already pending disparity of the Appellants and their cadre even further sink to the bottom of the deepest oceans, with no hopes of any redress. To remove disparity and ensure wellbeing of the people is the responsibility of the state, which in turn would eliminate the inequality in income and earning of individual including persons of various classes similarly placed as laid down in 2001 SCMR 1161, 2003 CLC 18, and 2019 PLC (CS) 238 (relevant para 12 & 13).
- c. Because vested rights of the appellant are created, which cannot be done away with, due to the whims and wishes of anyone. Per the principles of Locus Poenitentiae, the recovery and non-continuation of the allowance are both illegal and unlawful and cannot be allowed to proceed. These principles are enunciated in 2004 SCMR 1864 (relevant Para 7), 2020 PLC (CS) 1378 (relevant para 10),

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K. A. MEINER
Secretary
Tribunal

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2020 SCMR 188 (relevant Para 4), and 2018 SCMR 691. The case of the appellant on the touchstone of the above-referred precedents is one of straight out violation of the dictum of the Apex Court.

- d. Because Respondents have not treated Appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully ignored to remove disparity in earnings of the Appellants as compared to the other counterparts, which is unjust, unfair and hence not sustainable in the eye of law.
- e. Because the Notification issued by the Finance Department Notification vide No. FD(SOSR-II)2-5/20121-22(Executive Allow) dated 07-07-2021, in clear and unequivocal terms, entitles all PCS/PMS officers working in the Government of Khyber Pakhtunkhwa, without any differentiation whether they are from PCS executive, PCS Police, PCS, PCS secretariat or PCS Excise.
- f. Because the legal principal "Audi alteram partem" meaning 'hear the other side', or 'no man should be condemned unheard' or 'both the sides must be heard before passing any order', the maxim itself says no person shall be condemned unheard. Hence, no case or judgment can be decided without listening to the point of another party. This principle same was established by the august Supreme Court in Civil Petition No. 279-P/2015. The relevant portion of the Judgment is produced as under, for ready reference;

"Any proceeding arising out of the equity cannot be decided without providing opportunity of hearing. The learned High Court ought to have followed the principle of audi alteram partem and due process, which are basis of administration of justice, especially when any order, if passed, might affect the rights of the entity not party to the proceedings.

For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned judgment and remand the case back to the learned High Court for a decision afresh after affording opportunity of hearing to all concerned strictly in accordance with law."

- g. Because the Honorable Supreme Court of Pakistan has held in 2018 SCMR 691 that right once vested cannot be taken back in respect of allowances in the following terms:

"As a secondary and also tenuous argument, learned Deputy Attorney General contended that the Health Allowance is granted under executive fiat without any statutory backing therefore the same can be withdrawn by the Federal Government at any time. That is clearly a flawed contention. It is admitted that grant of the Health Allowance and the terms of eligibility to receive the same were determined by the competent authority, Ministry of Finance in accordance with Rules of Business of the Federal Government. The original terms of the said lawful grant still hold the field. These were acted upon and payment of the Health Allowance to the respondents has conferred a vested right upon them. In such

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SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA
ISLAMABAD

circumstances, the executive is barred by the rule of locus poenitentiae from unilaterally rescinding and retrieving the benefit availed by its recipients. Reference is made to Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi (PLD 1969 SC 407) and The Engineer-in-Chief Branch v. Jalaluddin (PLD 1992 SC 207). Therefore, without a change of the terms of eligibility for the Health Allowance even the prospective exclusion of the respondents from receipt of the benefit shall constitute arbitrary and unlawful action."

h. Because the appellant also place reliance upon the dictum laid in respect of accrual of a right, which cannot be unilaterally taken back. The same is reported as PLD 2021 SC 320, and relevant portion reads as:

"Otherwise the case of the respondent is also covered by section 24-A of General Clauses Act, 1897, which clearly reflect that once a right is accrued, the same cannot be withdrawn unless and until it is established that the scheme was obtained by practicing fraud or misrepresentation. Section 24-A of the General Clauses Act, 1897, is reproduced as under:-

"24-A. Exercise of power under enactments.-

(1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate give reasons for making the order or, as the case made be for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially."

The contention of the learned counsel for the respondent that the doctrine of promissory estoppel is squarely applicable has force. It is well settled that where the Government control functionaries make promise which ensues a right to anyone who believes them and acts under them, then those functionaries are precluded from acting detrimental to the rights of such person/citizen. Otherwise the case of the respondent is also hit by doctrine of "legitimate expectation". Justice (Retired) Fazl Karim, in his book, "Judicial Review of Public Actions" at page 1365 has equated the aforesaid doctrine to the "fairness" and equity which is legitimate attribute of a public functionary. The relevant passage reads like this:-

"The justification for treating "legitimate expectation" and 'promissory estoppel' together as grounds for judicial review is, one, that they both fall under the general head 'fairness'; and too, that 'legitimate expectation' is akin to an estoppel."

This very doctrine has a history of appreciation by this Court in various judgments including (1986 SCMR 1917) "Al-Samrez Enterprise v. The Federation of Pakistan" wherein it is held as under:-

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Khawar A. Khattak
Secretary
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"It is a settled rule that an executive authority cannot in exercise of the rule-making power or the power to amend, vary or rescind an earlier order, take away the rights vested in the citizen by law."

- i. Because the claim of the appellant also holds force and draws wisdom from the judgment of the Honorable Lahore High Court in 2020 P L C (C.S.) 1378, which relevant portion reads as:

"Once a right had been created by extending benefit after complying with codal formalities then same could not be destroyed or withdrawn--Constitutional petition was allowed."

- j. Because the case of the appellants is further strengthened by the dictum of honorable Lahore High Court reported as 2010 P L C (C.S.) 652, which held as:

"Withdrawal of special allowance allowed to the employees--- Grievances urged by the petitioners were that one month running pay allowed to them had been withdrawn by the authorities in view of the risk allowance salary package of the Punjab Police--Petitioners had been allowed special allowance of one month additional basic pay in addition to their pay--Same was allowed as incentive given to all the Police Prosecutors working as DSP Legal and Inspector Legal; and the same had duly been paid to the petitioners--Enhancement in the salaries of the Police Officials through special package was introduced to rationalize disparity in the salaries of various units, ranks of the Police and to bring same at par with the salary of Islamahad and Motorway Police --From the order whereby benefits were withdrawn it was quite obvious that special incentive allowance offered to the petitioners of one additional basic pay scale per month had not been withdrawn and the petitioners could not be deprived of the said special allowance--Petitioners, in circumstances were entitled to the same-- Authorities were directed by High Court to allow the payment of special allowance to the petitioners; arrears should also be paid to them; and if any recovery had been made same be reimbursed."

- k. Because the Objective Resolution which in pursuance of Article 2-A is now a substantive part of the Constitution, provides for equality, social justice as enunciated by Islam and guarantees Fundamental Rights and before law, social economic and political justice etc. The very scheme of Constitution casts a bounden responsibility on all and sundry about the equality and equal protection of law. Viewed from this angle the refusal on the part of the Respondents to equalize the position of Appellants with other similarly placed persons is an affront to the Resolution referred above and hence not sustainable.

- l. Because the principles of legitimate expectancy, which has time and again been reiterated to be one of the cardinal principles in respect of services laws by the

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permissible to the officers of the same Attached Departments thus disparity and discrimination exists in terms of allowances to the officers of the same caliber despite having same terms and conditions as decided by the competent authority.

- r. Because under Article 8 of the Constitution of the Islamic Republic of Pakistan, 1973 if any law, any custom or usage having the force of law if repugnant to the Fundamental Rights is void to the extent of its inconsistency and State has been prohibited from making law which takes away or abridges such rights. Article 25 dictates that all are equal before law and entitled to equal protection of law which is also the basic concept of Islam under which all persons similarly placed in similar circumstances must be treated alike and when certain rights were made available to one or more persons similarly placed then all such persons similarly placed with them would stand entitled to such rights. Thus in this backdrop of the matter Appellants have been highly discriminated ins much as the classification is not based upon reasonable and intelligible differentia and therefore, the acts and actions of the Respondents militate against the concept of equality and equality in service as enshrined in Articles-25&27 of the Constitution of Islamic Republic of Pakistan, 1973.
- s. Because in the same sequence the Principles of Policy incorporated in Chapter-2 of the Constitution which have also been made the responsibility of each Organ and Authority of the State to act upon it in so far as the same relate to the functions of the organs or authority, directs for the discouragement inter-alia of the Provincial prejudices amongst the citizens; the promotion with special care of the educational and economic interest of the backward classes; for promotion of social justice and for the eradication of social evils; the promotion of social and economic wellbeing of the people including equality in earnings of individuals in various classes of the service of Pakistan.
- t. Because the Rules of Business of Khyber Pakhtunkhwa Government have been washed down the drain by the Respondents with no regard for the law.
- u. Because the Appellant cannot be made to suffer for no fault of their own, that too in an arbitrary and illegal manner, wherein all the norms of natural justice have been flouted, the law ignored, rules violated with the sole intention of depriving the Appellants from their lawful share in allowances.
- v. Because there have been no complaints against the Appellant in the performance of their duties, in case there are any delinquents (which there are none in the Appellants, all having spotless careers) there is proper mechanism for proceeding against them. Yet for no fault of the Appellant or the employees of the department, the entire departmental staff is being made to suffer and deprived of their vested interests.
- w. Because there is evident discrimination in respect of pays and allowances. Despite being the highest revenue generating and collecting department, pays and allowances are not even compatible with other government departments. And Because Finance Department is not competent to declare who is and who is not PMS officer.

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18. Because other grounds exist which shall be raised at the time of arguments with the permission of this Honorable Court.

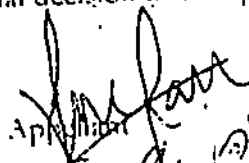
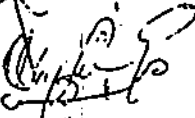
Prayer:

It is therefore most humbly prayed that on the acceptance of this Appeal, may it please this Honorable Tribunal to:


- a. Declare that the actions of the respondent (Finance Department) dated 15-08-2022 (NO.SOSR-IV/FD/1-13/2021/E&TD) by virtue of which the Finance Department regretted the representation of Appellants despite the favorable comments of the Excise Department to be arbitrary, illegal, unlawful and without any jurisdiction.
- b. Declare further that the discontinuation of the Executive Allowance @150% to be illegal, unlawful and without any authority vested in the Finance Department.
- c. Declare that the recoveries affected from the appellants to be illegal and unlawful and without any jurisdiction.
- d. Direct that the Executive Allowance @150% be continued to the appellants forthwith with all arrears and restrain the department from taking any further arbitrary decisions against the appellants.
- e. Grant any other relief that this Honorable Tribunal may deem fit and appropriate in the circumstances of the case.

Interim Relief:

It is most humbly requested that pending the instant appeal, no recoveries be affected from the appellants and furthermore, the Executive Allowance be directed to be continued till the final decision of the appeal.

Appellant 
 Through 

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 Khayal Ahmad
 Service Director
 Peshawar

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Annexed
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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1435/2022

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

Sufyan Haqqani, (Director Peshawar Region), Excise, Taxation & Narcotics Control Department Khyber Pakhtunkhwa, Peshawar.
.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat Peshawar.
3. The Excise and Taxation & Narcotics Control Department, Government of Khyber Pakhtunkhwa Peshawar.
4. Director General Excise, Taxation & Narcotics Control Department.
.... (Respondents)

Mr. Gohar Ali Durani
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....15.06.2020
Date of Hearing.....15.11.2023
Date of Decision.....15.11.2023

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:

"Declare that the actions of the respondents dated 15.08.2022 by virtue of which the Finance Department regretted the representation of appellants despite the favorable comments of the Excise Department to be

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arbitrary, illegal, unlawful and without any jurisdiction.”

“Declare further that the discontinuation of the Executive allowance 150% to be illegal, unlawful and without any authority vested in the Finance department”

“Declare that the recoveries affected from the appellants to be illegal and unlawful and without any jurisdiction”

“Direct that the Executive Allowance 150% be continued to the appellants forthwith with all arrears and retrain the department from taking any further arbitrary decisions against the appellants”

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (1) Service Appeal No. 1436/2022 titled “Sufian Haqqani Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others”(2) Service Appeal No. 1437/2022 titled “Sufian Haqqani Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (3) Service Appeal No. 1438/2022 titled “Dr. Eid Badshad Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (4) Service Appeal No. 1439/2022 titled “Faisal Khurshid Burki Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (5) Service Appeal No. 1440/2022 titled “Said Ul Amin Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (6) Service Appeal No. 1441/2022 titled “Saim Jhangra Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (7) Service Appeal No. 1442/2022 titled “Masaud Ul Haq Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (8) Service Appeal No. 1443/2022 titled “Fawad Iqbal Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (9) Service Appeal No. 1444/2022 titled “Fazal Ghafoor Vs

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CHIEF JUSTICE
KHYBER PAKHTUNKHWA
JUDICIAL DEPARTMENT
ISLAMABAD

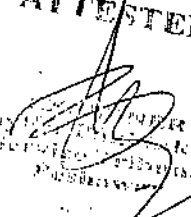
(17)

.Government of Khyber Pakhtunkhwa through Chief Secretary and others”

(10) Service Appeal No. 1445/2022 titled “Tariq Mehsud Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (11) Service Appeal No. 1446/2022 titled “Salah Ud Din Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (12) Service Appeal No. 1447/2022 titled “Javed Khilji Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (13) Service Appeal No. 1448/2022 titled “Andaleep Naz Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (14) Service Appeal No. 1449/2022 titled “Rehman Uddin Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (15) Service Appeal No. 1450/2022 titled “Imad Uddin Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” as in all these appeals common questions of law and facts are involved.

3. Brief facts of the case, as given in the memoranda of appeal are that the appellant applied to the post of in light of advertisement issued by Public Service Commission. Appellants meet the criteria of competitive examination, interview and psychological evaluation like PMS & PAS officer and thereafter also complete training like them spread upon period of eight months. That appellants were allowed executive allowance by the government like other PMS Officers but same was stopped by respondents which was not in accordance with law and rules on the subject. It is contention of the appellant that they were not treated in accordance with law; appellant are also Public Service Commission qualified officers; who were appointed upon recommendation of Public Service Commission after going through the standard set by the Public Service Commission like PAS & PMS

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Secretary
Public Service Commission



officers to whom executive allowance was given by the government. They contended that appellants had never applied for the executive allowance but when the same was given/allowed to them so that created rights in favour of the appellants and now asking for recovery from the appellants by the Finance Department was unjustified. They also contended that appellant were revenue generating agency and contributed to the Government exchequer, therefore, they ere entitled for the same which were unlawfully stopped/from him. Appellants applied to the authority who turned down their request, hence, the instant 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 learned District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that appellant had not been treated in accordance with law and rules. Article 4, 9, 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 were being violated by the respondent department in taking away the due right of executive allowance from the appellants, while extended to others. He further argued that the vested rights of the appellants were created, as it was allowed to the appellant by respondents at their own, which could not be done away with, due to the whims and wishes of anyone as per principle of *locus poenitentiae*, the recovery and non-continuation of the allowance were both illegal and unlawful and could not be allowed to proceed. He further contended that Finance Department Notification dated 07.07.2021 was in clear and unequivocal terms, entitlement to all PCS/PMS officers working in the Government of Khyber Pakhtunkhwa without any differentiation whether they were from PCS Executive, PCS Police, PCS

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SECRETARY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Secretariat or PCS Excise. He further argued that appellants were Public Service Commission qualified officer who had passed the exam with same syllabus and gone through eight weeks training like PCS executive therefore, they were rightly given earlier this allowance and requested for its continuation.

6. Conversely, learned Deputy District Attorney for the respondents contended that Establishment and Excise Department are two different departments having different cadre and set of rules, standard of induction, method of recruitment and promotion. He further contended that Excise department is governed by its own set of rules 2018 and PMS runs under 2007 rules and its parent department Establishment & Administration Department having different nomenclature, schedule, promotion, training and induction method. If directorate of Excise, Taxation has not its own syllabus of training Module, then they should frame its own syllabus & Training Module. He further submitted appellants are not covered under the provision of Finance Department notification dated 15.08.2022 Excise Directorate are not covered under the provision of the Department's notification as they are neither PAS, PCS, PMS Officers nor posted against the scheduled posts but are inducted through Khyber Pakhtunkhwa Public Service Commission as ETOs.

7. Perusal of record reveals that appellants are the employees of Excise, Taxation and Narcotics Control Department, who were duly appointed as their posts were advertised by the Public Service Commission in the light of which they applied for it and appeared in the competitive examinations, interview and after psychological evaluation they were appointed; who were later on promoted as Director. 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

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SECRETARY
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION

being Public Service Commission qualified officers were started payments of the allowance without any request by the appellant for it. This allowance was given to the appellants till April, 2022 and thereafter it was stopped in May, 2022 upon which appellants filed departmental representation to respondent on 01.06.2022. Although Administrative Department in their comments upon representation of appellant to the Finance Department fully endorsed the appellant's plea and recommended for continuation of allowance but the Finance Department, vide order dated 15.08.2022 regretted representation of the appellant and also ordered for recovery of the amount paid to appellants. It is alleged by the appellants that regretal of appellant's representation by the Finance Department caused disparity and it was discrimination with the appellants. Recovery of the paid amount from the appellants was against the law as appellants never applied for that and it was stated to them by the department itself, which was termed by the Finance Department as irregularity. Appellant alleged that they were not treated in accordance with law.

8. Main contention of the appellants is that they are entitled for executive allowance at the rate of 1.5% of initial basic pay because they entered into service after going through the same procedure, method of recruitment, through which PMS, PCS and PAS officers are recruited i.e advertisement by the Public Service Commission of the post, competitive written examination in eight similar subjects rather in same subjects/syllabus, psychological evaluation and interviews followed by same training modules of eight months. Appellants exam were conducted under PMS Rules 2007. The other contention is that they were discriminated and were not equally treated as almost all the cadre/department/employees and officer were allowed allowance but the appellants are deprived from it, which created disparity and injustice.

9. Scheduled post by the government is one which is specifically mentioned

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 PUBLIC SERVICE COMMISSION
 Government of India

in scheduled appended with provision PMS Rules 2007. The post of the appellants are not mentioned in it and appellants are working under Excise Department which is a different department than Establishment Department.

10. It is evident on record that employees of almost all the departments were allowed allowances at the rate of 1.5% of their basic pay and appellants were deprived from it, despite the fact that they are revenue generating agency and contributed to government exchange with their efforts. Therefore, they will have to be treated at par with the employees of other departments. Hence, they may also be given the same treatment and allowed any allowance, which the Finance Department deems appropriate to name it.

11. As a sequel to above discussion, we are unison to dispose of this appeal as well as connected service appeals on the above terms. Cost shall follow the events. Consign.

12. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of November, 2023.


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah

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PESHAWAR

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بعد الت

Before Service Tribunal
Peshawar

2025ء منجانب مسائل

Govt of Punjab Syfy an Haqani

مورخہ

مقدمہ

دعویٰ 3-0834062-12201

جرم 0346-9773781

1734-18-BC باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

کیلئے (صحت لکھی) (مہتمم احمد حسن)

آن مقام ہمسماور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق و زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور سنسوشی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا سائنٹ پر راختہ منظور و قبول ہوگا و ان مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے و ہوں گے۔ وہی تاریخ پیشی مقام دورہ پر ہوا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

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ماہ محرم

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الرقوم

Attested & Accepted by
Rahmat Khan Kandi
Attz

M. J. Anwar
KTC

Director (Taxation & Narcotics)
Syfy an Haqani

Director (Ex-cise & Taxation & Narcotic)
Sufyan Haganani
Control department (D)

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الرقوم

مقدمہ مندرجہ ذیل پر جاننے والے ہیں اور اس پر جاننے والے ہیں۔
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Attested & Accepted by
Rahmat Khan Landi
M.A. S. Hassan
M.A.T.C

مقدمہ مندرجہ ذیل پر جاننے والے ہیں اور اس پر جاننے والے ہیں۔
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Sufyan Haganani
2025

Before Service Tribunal
Peshawar

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