

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**

Service Appeal No.1405/2022

Date of presentation of Appeal.....27.09.2022

Date of Hearing.....12.06.2024

Date of Decision.....12.06.2024

Mr. Wajid Ur Rehman, SPET (BPS-16), GHS Tari Banda, District Hangu.....(Appellant)

Versus

1. **The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.**
4. **The District Education Officer, District Hangu.**
5. **The District Account Officer, District Hangu.....(Respondents)**

Present:

Mr. Munfat Ali Yousafzai, Advocate.....For the appellant

Mr. Muhammad Jan, District AttorneyFor respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 06.11.2020 WHEREBY THE APPELLANT HAS BEEN GRANTED M.PHIL ALLOWANCE WITH IMMEDIATE EFFECT RATHER THAN RETROSPECTIVE EFFECT FROM THE DATE OF FINANCE DEPARTMENT LETTER DATED 01.07.2016 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant's case in brief, as alleged in the memo and grounds of appeal are that he was serving as Senior Physical Education Teacher (BPS-16). That vide Notification dated

01.07.2016, the Finance Department had allowed M.Phil allowance to the employees who had the M.Phil. Degree. That the appellant allegedly entitled for the said allowance w.e.f the date of Notification, he was allowed such allowance vide sanction order dated 06.11.2020. Feeling aggrieved, he filed departmental appeal, but the same was not responded, hence, the instant service appeal.

03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

04. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

06. Although, the government has allowed M.Phil allowance, but the Finance Department through a letter dated 13.02.2020 has clarified that M.Phil allowance was allowed from the date of approval of the competent authority and no arrears' claim could be entertained being not covered under the policy of the Government. The appellant had submitted the application on 04.09.2020 for grant of the M.Phil allowance, and vide sanction dated 06.11.2020, he was allowed such allowance. Since the appellant has not challenged the letter of the Finance Department dated

13.02.2020, whereby, the Finance Department had contended that the M.Phil allowance was to be allowed from the date of approval of the competent authority with no arrears. The appellant seeks grant of M.Phil allowance alleging that vide Notification dated 14.07.2014, he was entitled for M.Phil allowance. For the purpose he filed departmental appeal on 02.06.2022, whereas, he was getting the allowance from 06.11.2020. He has not explained the delay caused in filing the departmental appeal and it is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426 rendering this appeal not maintainable.

07. Having considered the matter from all angles in the light of material available on file, we do not find any merit in the instant service appeal which is hereby dismissed with costs. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of June 2024.*



KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

S.A No.1405/2022

ORDER


12th June. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we do not find any merit in the instant service appeal which is hereby dismissed with costs. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of June, 2024.*

(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman