

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7303/2021

BEFORE: MR. KALIM ARSHAD KHAH ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Dr. Syed Sarwar Shah, Principal Dental Surgeon (BPS-19) at Type D Hospital Gara Tajik, Peshawar.

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber, Peshawar.
2. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
5. The Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
6. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Habib Anwar
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....11.08.2021

Date of Hearing.....09.07.2024

Date of Decision.....09.07.2024

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 prayer copied as below:

“That on acceptance of this appeal, the Hon’ble Tribunal may graciously be please to allow the departmental appeal of the appellants as



prayed and thus direct the respondents to allow HPA during the period between 26.07.2019 till 31.12.2019 and any other relief not specifically prayed, may also be granted, if appears just, necessary and appropriate.”

2. Through this single judgment we intend to disposed of instant service appeal as well as connected service appeals (1) Service Appeal No. 7304/202 titled “Dr. Wali Khan Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others”(2) Service Appeal No. 7305/2021 titled “Dr. Adnan Taj Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others” (3) Service Appeal No. 7306/2021 titled “Dr. Muhammad Sohail Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others” (4) Service Appeal No. 7307/2022 titled “Dr. Arif Jamal 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 cases, as given in the memoranda of appeals, are that the appellants were the regular employees of the Health Department and now posted at different places mentioned in their respective appeals. The appellants alongwith other similarly placed employees of the province were getting Health Professional Allowance since 2011 which was enhanced in 2016 at various rates for various categories keeping in view the category of hospitals and its locality. Prior to promulgation of the Medical Teaching Institutions Reforms Act of 2015, most of the sanctioned posts of Health Department were created in those MTIs which were available in all those MTIs, however, Section-16 of the Act ibid granted them the status of



deputationists and provide the MTIs to treat such civil servants in the manner as provided under 11-A of the Civil Servants Act, 1973 for their future postings. The appellants were relieved from (different hospitals on different dates mentioned in their respective appeals) and their services were placed at the disposal of Director General Health Services, Khyber Pakhtunkhwa Peshawar (respondent No. 5) for further posting. In response, the appellants immediately submitted their arrival report alongwith their Last Pay Certificate to respondent No. 5 for their further posting but of no avail. Respondent No. 5 vide letter dated 02.08.2019 forwarded their request to the competent authority/respondent No. 2 for his further posting. The appellants were posted against the sanctioned/vacant post of Principal Dental Surgeon (BPS-19) District Headquarter Hospital Battagram (other appellants were posted at different posts mentioned in their respective appeals) but with a delay of more than 04 months with the condition that posting order was for the drawal of pay alongwith the pay and allowances for the period of waiting as admissible under Rule-8(1) of Khyber Pakhtunkhwa Delegation of Powers Rules, 2018. Subsequently vide notification dated 31.12.2019, the appellants were further posted against the vacant/sanctioned post of Principal Dental Surgeon at Category D Hospital Gara Tajik, Peshawar where he was still serving. However, respondents in clear violation of earlier notification of 13.12.2019, illegally denied the payment of HPA to the appellant despite the fact that he had obeyed all his transfer and posting orders right from relieving order on 26.07.2019 till his posting against the sanctioned post on 31.12.2019. The appellant requested the respondents for regularization of his gap period and for allowing him



HPA against the sanctioned post for the period between 26.07.2019 till 31.12.2019 which was not allowed. He and his other colleagues were constrained to file Writ Petition No. 3218-P/2020 before the Hon'ble Peshawar High Court, Peshawar. Vide order dated 21.04.20-21, the writ petition was treated as a departmental appeal and sent to the Director General Health Services, Government of Khyber Pakhtunkhwa to decide the same within a month after the receipt of that judgment and thereafter, the appellants might have recourse to the proper remedy available to them under the law. Now after lapse of more than 03 months, as the respondents failed to respond the departmental appeal; hence the instant service appeal.

4. 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.

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

6. 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).

7. Perusal of record reveals that appellants herein are regular employees of Health Department. Ever since 2011, the appellants along with other similarly placed employees of the province are getting Health Professional Allowance (herein-after referred to as HPA) which was enhanced in 2016 at



various rates for various categories keeping in view the category of hospitals and its locality.

8. Appellants were posted at MTI/LRH Peshawar where-after he was relieved on 26.07.2019, their services were placed at the disposal of Director General Health Services, Khyber Pakhtunkhwa for further posting. Appellants submitted arrival alongwith his LPC with request to post them but after delay of 4 months appellants were posted against the vacant post of Principal Dental Surgeon BS-19, District Headquarter Hospital Battagram vide order 13.12.2019. Perusal of which reveals that appellants were held entitled for the purpose of drawl of pay alongwith the pay and allowance for their waiting period under Rule 8 of Khyber Pakhtunkhwa Delegation of Powers Finance Department Rules 2018.

9. Appellants claim HPA which was admissible to the employees of Health Department upon the strength of notification dated 07.01.2016, in accordance with condition No. (ii) HPA will be admissible only during period of posting against the sanctioned post at Health Department. Respondent in their own order dated 13.12.2019, had clearly mentioned that appellant would draw his pay and allowances of the waiting period which means period during which appellant was not posted against sanctioned post.

10. It is not clear from the word "allowances" as to which allowances were meant by the authority in order dated 13.12.2019, whether it included Health Professional Allowance (HPA) or not? This question can only be answered by the authority issued order dated 13.12.2019, therefore, we remit the matter to authority for settling the issue at its own and with direction to



the respondents to decide it within ninety days after receipt of copy of this order. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 9th day of July, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)