
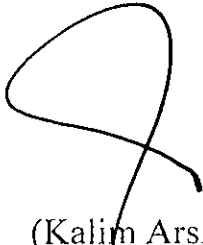


09th May, 2024

1. Clerk to counsel for the appellant present. Mr. Muhammad Rizwan, Assistant Director (Litigation) alongwith Mr. Arshad Azam, Assistant Advocate General for the respondents present.

2. Counsels are on strike, therefore, the case is adjourned to 27.06.2024 for arguments before the D.B. Parcha Peshi given to the parties.


(Muhammad Akbar Khan)
Member (Executive)


(Kalim Arshad Khan)
Chairman

Naeem Amin

ORDER

27.06.2024 1 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Muhammad Rizwan, Assistant Director (Litigation), for respondents present.

2. Vide our detailed judgment of today placed on file, we held that these appeals are not maintainable, however appellants are at liberty to approached proper forum, if desired in accordance with law. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given our hands and seal of the Tribunal on this 27th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
MEMBER (E)


(RASHIDA BANO)
MEMBER (J)

*Kaleemullah

9. But now there exist bar of jurisdiction, therefore, we held that these appeals are not maintainable, however appellants are at liberty to approached proper forum, if desired in accordance with law.

10. *Pronounced in open court at Peshawar and given our hands and seal of the Tribunal on this 27th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
MEMBER (E)


(RASHIDA BANO)
MEMBER (J)

*Kaleemullah


7. The aforesaid definition of the expression "Up-gradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. In fact, this court in the judgment titled as Azhar Khan Baloch Vs Province of Sindh (2015 SCMR 450) and reported judgment of this court passed in the case of Chief Commissioner Revenue and another Vs. Muhammad Afzal Khan (Civil Appeal No.992 of 2014) has held that the issue relating to up-gradation of civil servants can be decided by a High Court in exercise of its constitutional jurisdiction and bar contained under Article 212(3) of the Constitution would not be attracted. The policy of up-gradation, notified by the Government, in no way, amends the terms and conditions of service of the civil servants or the Civil Servants Act and or the Rule, framed there under the Service Tribunal have no jurisdiction to entertain any appeal involving the issue of up-gradation, as it does not form part of the terms and conditions of service of the civil servants. The question in hand has already been answered by the aforesaid two judgments of this court."

Although this Tribunal entertains appeals pertaining to question of up-gradation and matter related to it, but same was on 05.11.2012 before above referred Judgment of Supreme Court dated 17.02.2016 and at that time up-gradation was erroneously considered as part of term and condition of a civil servant.

light of judgment of this Tribunal order dated 05.11.2012, the respondents/department concerned vide notification dated 05.09.2019 had given up-gradation to the colleagues of the appellants from BPS-16 to BPS-17 with effect from 01.10.2007 instead of 20.01.2010.

8. Record reveals that basic question in the appeals in hand is of up-gradation and matter relates to up-gradation. This Tribunal lacks jurisdiction to entertain appeals about up-gradation or matters related to up-gradations which become settled law after pronounced of judgment by apex court of the country in reported judgment delivered in the case of Regional Commissioner Income Tax Vs. Syed Munawar Ali reported, wherein it is held that;

“6. We have heard the learned counsel for the parties and have perused the record, The expression “up-gradation” is distinct, from the expression “Promotion”, which is not defined other in the Civil Servants Act or the Rules framed thereunder, and is restricted to the post (office) and not with the person occupying it. The up-gradation cannot be made to benefit a particular individual in term of promoting him to higher post and further providing him with the avenues of lateral appointment or transfer or posting. In order in justify the up-gradation, the Government is required to establish that the department needs re-structuring, reform or to meet the exigency of service in public interest. In the absence of these pre-conditions, up-gradation is not permissible.



4. Learned counsels for the appellants argued that appellants have not been treated in accordance with law and rules. He further argued that inaction of the respondents for not treating the appellants with equality and at par with their colleagues, who have been given up-gradation from 01.10.2007 is absolutely illegal, unlawful, void ab initio and against the principles of natural justice. He further argued that colleagues of the appellants were given up-gradation in the light of judgment of this Tribunal dated 05.11.2012, therefore, the appellants also deserve to be treated at par with their colleagues.

6. Conversely, learned Deputy District Attorney contended that the respondents has been treated in accordance with law and rules. He further contended that one step up-gradation of SST from BPS-16 to BPS-17 personal notified vide notification dated 20.01.2010 in accordance with law and rules. He further argued that the present appeals are of up-gradation and not of promotion and this Tribunal lacks the jurisdiction. He submitted that departmental appeals of the appellants are barred by time, therefore, instant appeals might be dismissed.

7. Perusal of record reveals that appellants were appointed as SETs on regular basis in the year 2007, however the Government upgraded posts from BPS-16 to BPS-17 vide notification dated 20.01.2010 with effect from 20.01.2010 instead of 01.10.2007. Some of the colleagues being dissatisfied with their up-gradation from 20.01.2010, approached this Tribunal for redressal of their grievances in Service Appeal No. 1241/2011 along with other connected appeals and the same were disposed of by this Tribunal vide judgment dated 05.11.2012. Later on the appellants came to know that in the

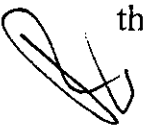
effect from 01.10.2007 as given to Rehmat Ullah and other colleagues vide notification dated 05.09.2019 in the light of judgment of this Hon'ble Tribunal dated 05.11.2012. Any other relief in the case as deemed fit and proper by this hon'ble court."

2. Through this judgment, we intend to dispose of the instant service appeal as well as connected service appeals having common questions of law and facts are involved, which are given as under:

1. **Service Appeal No.1702/2022**
2. **Service Appeal No.1703/2022**
3. **Service Appeal No.1704/2022**
4. **Service Appeal No.1705/2022**

3. Brief facts of the case are that appellants were appointed as SET on regular basis however in the year 2007, the government upgraded posts from BPS-16 to BPS-17 with effect from 01.02.2007, however, the appellants and some of their colleagues were upgraded from BPS-16 to BPS-17 vide notification No. SO(PE)2-6/SET(BPS-16) U-gradation to BPS-17 dated 20.01.2010 with effect from 20.01.2010 instead of 01.10.2007. Some colleagues being dissatisfied with their up-gradation from 20.01.2010, file appeal No. 1241/2011 in this Tribunal, which was disposed of vide judgment dated 05.11.2012. Appellants filed departmental appeals, which were not responded, hence the present service appeals.

3. Respondents were put on notice who submitted written reply/comments on the appeals. We have heard learned counsels for the appellants and Mr.Asif Masood Ali Shah, Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.



BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 1701/2022

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

**Mr. Hayat Ullah S/O Wali Jan R/o Muwar Killa, Post Office Domail,
District Bannu.**

.... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
2. Secretary Finance Department, Civil Secretariat, Peshawar.
3. Director, Elementary & Secondary Education, Peshawar.

.... (*Respondents*)

Mohammad Adnan Sher
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution..... 29.11.2022
Date of Hearing..... 27.06.2024
Date of Decision..... 27.06.2024

JUDGMENT

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

“On acceptance of instant appeal, direct the respondent/respondents concerned to consider and treat the appellants at par with their

colleagues by giving them upgradation from BPS-16 to BPS-17 with

