

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT
SWAT

Service Appeal No.7881/2021

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

Mr. Maqsood ur Rehman, Ex-Statistical Officer (Supervisory), Crop Reporting Services, District Swat, Malakand Division.

... (*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary of Government of KPK, Agriculture, Livestock & Cooperative Department, Civil Secretariat, Peshawar.
3. The Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.

... (*Respondents*)

Syed Yahya Zahid Gil ... For appellant
Advocate

Mr. Muhammad Jan ... For respondents
District Attorney

Date of Institution.....07.12.2021
Date of Hearing.....03.09.2024
Date of Decision.....03.09.2024

JUDGMENT

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

“On acceptance of this service appeal, this Hon’ble Court may graciously be pleased to:-



1. Declare the non up-gradation of the appellant to BPS-18 (Personal) along with his colleagues and junior to him vide notification dated 05.07.2017 w.e.f. 27.07.2010; is against the spirit and substance of consolidated judgment of this Hon'ble Tribunal dated 26.07.2010 rendered in Service Appeal No.1831 to 1843 and 1856 to 1882 and also against the reported judgment of the Hon'ble Supreme Court of Pakistan reported as 2005 SCMR 499, 1996 SCMR 1185 and 2009 SCMR 1 and others.

2. Direct the respondents to grant the appellant proforma up-gradation to BS-18 (Personal) with all attached benefits with effect from the date of his colleagues and junior to him; have been granted up-gradation to BS-18 (Personal) i.e. with effect from 27.07.2010 till the date of retirement. Any other relief which this Honorable Court deems appropriate but not specifically asked for may also be granted."

2. Brief facts of the case are that appellant was enrolled in the respondent department w.e.f. 03.05.1987 as Statistical Officer in BPS-17 on the recommendation of Public Service Commission and upon attaining the age of superannuation was retired from service w.e.f 23.10.2021; colleagues of the appellant approached the Hon'ble Tribunal through service appeal No.1831-1843 of 2009 and 1856-1862 of 2009 for up-gradation of their posts (Statistical Officer (Supervisory) CRS to BPS-18 on the nexus of similarly placed officers in the other attached wings of Agriculture Department. The Service Tribunal in its consolidated judgment/order dated 26.07.2010 allowed all the appeals cited *ibid* with directions to the respondents to submit a summary for re-designation/re-structuring of the posts of Statistical Officer

incumbents of abolished posts; all Assistant Statistical Officer were posted against the post of appellant's cadre/posts i.e. Statistical Officer (Supervisory) and resultantly their seniority were also amalgamated through notification dated 22.12.2016 and Assistant Statistical Officer were declared as senior to appellant cadre. The appellant feeling aggrieved from the seniority list dated 22.12.2016; filed departmental appeal which was rejected vide order dated 06.12.2017. Appellant filed service appeal No.567/2018, which was allowed vide judgment/order dated 02.09.2021 and appellant was declared senior to those who were recruited as Assistant Investigation (BPS-16) initially; the appellant was promoted to the post of Statistician (BPS-18) of Crop Reporting Services wing vide notification dated 29.01.2021; appellant being aggrieved from discriminatory treatment, filed departmental appeal which was not responded, hence the present service appeal.

3. 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.

4. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

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

6. Perusal of record reveals that appellant through instant appeal seeks his proforma up-gradation to BPS-18 (Personal) from 27.07.2010 alongwith his colleagues and juniors to him who were granted the same relief vide

BPS-17 at par with District Soil Conservation Officer, Crops Reporting Service which has been upgraded by the Government of Punjab. In light of the judgment of service tribunal dated 26.07.2010, the competent authority (respondent No.2) upgraded the posts of 20 appellants of the appeal from BPS-17 to BPS-18 (Personal) with retrospective effect w.e.f. 27.07.2010. That the case of the appellant is/was similar and identical with the cases of the above mentioned appellants, whose posts were upgraded from BPS-17 to BPS-18 (Personal) in the light of the directions of the Hon'ble Service Tribunal, Khyber Pakhtunkhwa, Peshawar. The appellant being the colleague of the judgment holders and his case was similar and identical in all respect with the cases of those Statistical Officer whose posts have been upgraded from BPS-17 to BS-18 (Personal) vide order dated 05.07.2017 w.e.f. 27.07.2010, therefore, he deserves to be treated similarly by granting him up-gradation from BPS-17 to BPS-18 w.e.f. the date i.e. 27.07.2010. It is pertinent to mention here that all the posts of statistical investigators (BPS-16) in the respondent department, who were recruited on ad hoc basis during the period 1985 and 1986 and later on regularized as Assistant Statistical Officer and whereas appellant's cadre i.e. Assistant Statistical Officer, who were recruited through Public Service Commission in BPS-17 were re-designated as Statistical Officer (BPS-17) with a special pay of Rs.150/pm as supervisory pay with effect from 01.07.1997 vide order dated 27.06.1997. Seniority of both the cadre i.e Assistant Statistical Officer (BPS-17) and appellant cadre i.e. Statistical Officers (Supervisory) were maintained separately till 2004. The post of Assistant Statistical Officer were abolished in the wake of devolution plan, 2001 and whereas the posts of appellant's cadre i.e. Statistical Officer (Supervisory) (BPS-17) remain intact. In order to accommodate the

notification dated 05.07.2017 on the principle of similarly placed person with further request to grant all the attached benefits with the up-gradation from 27.07.2010.

7. Record reveals that basic question in the appeal in hand is of up-gradation and matter related 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 in Regional Commissioner Income Tax Vs. Syed Munawar Ali reported as 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 there under, 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.

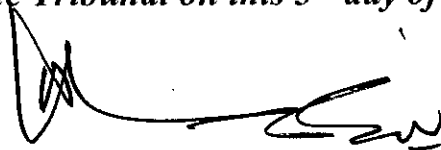
7. The aforesaid definition of the expression “Up-gradation” clearly manifests that it cannot be construed as promotion, but can granted through a policy. In fact, this court in the judgment titled as Azhar Khan Baloch Vs Province of Sindh (2015 SCMR 450) and reported judgment of this court passed in 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 police 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 had entertained appeal pertaining to question of up-gradation and matter related to it but same was on 26.07.2010 before above referred Judgment of Supreme Court dated 17.02.2016 and at that time up-gradation was erroneously considered as part of terms and conditions of a civil servant. Therefore, same is not binding now upon us and appellant plea of similar placed person with respect to up-gradation is not maintainable.

8. For what has been discussed above, we are unison to dismiss the appeal in hand being not maintainable. Cost shall follow the events. Consign.

11. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 3rd day of September, 2024.*


(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)

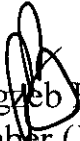
03rd July, 2024

Appellant alongwith his counsel present. Mr. Attaullah, Deputy Director (Finance) alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant stated that he want to file an application for amendments in the instant appeal, therefore, an adjournment may be granted to him. The case is adjourned on his request. To come up for arguments on 03.09.2024 before the D.B at Camp Court, Swat. Parcha Peshi given to the parties.

SCANNED
FCPS
Peshawar


(Muhammad Akbar Khan)
Member (Executive)
Camp Court, Swat


(Aurangzeb Khattak)
Member (Judicial)
Camp Court, Swat

Naeem Amin

ORDER

03.09.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney alongwith Mr. Attaullah, Deputy Director (Finance) for respondents present.
2. For what has been discussed above, we are unison to dismiss the appeal in hand being not maintainable. Cost shall follow the events. Consign.
3. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 3rd day of September, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

*M.Khan