

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT
SWAT

Service Appeal No.716/2020

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

Mr. Khazan Gul S/O Fateh Gul R/O Mohallah Miangano Cham Naram
P.O Khadagzai Tehsil Adenzai, District Lower Dir.

.... (*Appellant*)

VERSUS

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

... (*Respondents*)

Mr. Javid Ali
Advocate ... For appellant

Mr. Umair Azam
Additional Advocate General ... For respondents

Date of Institution.....02.01.2020
Date of Hearing.....04.09.2024
Date of Decision.....04.09.2024

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, the impugned order dated 05.12.2019 may please be set aside and the respondents may kindly be restrained from interference of the appellant entries in service book pertaining to placing of the appellant from BPS-9 to BPS -14 and deducting/depriving the appellant from the annual increments and benefits accrued/availed in BPS-14.”

2. Brief facts of the case are that appellant that Executive District Officer, Dir Lower advertised certain posts of Certified Teacher in Daily “Aaj” on 19.01.2008. Appellant being qualified also applied for the post of CT Agriculture. After conducting the due process, respondent No.6 issued appointments orders of the successful candidates of CT General on 14.02.2009, while delayed the process of appointment of CT Agriculture candidate, against which appellant alongwith others filed writ petition No. 150/2009 before the Hon’ble Peshawar High Court, Peshawar, which was disposed of vide order dated 07.10.2009. In pursuance of said order, respondents issued appointment order of the appellant on 07.03.2011. The appellant having MA & M.Ed qualification was upgraded from BPS-9 to BPS-14 in light of notification dated 07.08.1991 and 28.07.2009. Subsequently, vide notification of respondent No.10 dated 22.10.2016, the appellant was promoted from BPS-15 to 16. In the year 2019, the Pay Fixation Party raised objection upon up-gradation of the appellant from BPS-9 to BPS-14 and in this respect entry was also made in his service book by the Pay Fixation Officer in September 2009. Feeling aggrieved from the reversal entries, appellant filed departmental appeal on 23.09.2019, which was rejected on 05.12.2019, 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 Additional Advocate General 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 Additional Advocate General controverted the same by supporting the impugned order(s).

6. The appeal filed by the appellant seeks to challenge the reversal of his upgradation from BPS-9 to BPS-14 and the resulting adjustments in his service book. While these issues are service-related, the nature of the dispute involves intricate details of pay fixation and administrative actions which may be beyond the direct purview of the Service Tribunal's jurisdiction if they pertain to procedural or administrative issues rather than core service conditions. Additionally, the appellant's appeal was previously adjudicated at the departmental level, and the appeal challenging that decision now appears to be more about the correctness of administrative decisions rather than the application of service rules. As such, it may be argued that the matter may not be appropriately addressed under the Service Tribunals Act if it involves detailed administrative and procedural issues that require examination beyond the Tribunal's typical jurisdiction.



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 pronouncement of judgment by apex court of the country in case titled Regional Commissioner Income Tax Vs. Syed Munawar Ali reported in reported in 2016 SCMR 859 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 entertains 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.

8. For what has been discussed above, we are unison to disposed of the appeal in hand being not maintainable. However, appellant is at liberty to approach proper forum, if he so advised/desired. Cost shall follow the events. Consign.

9. *Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 4th day of September, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

Order Sheet

04.09.2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General alongwith Mr. Shahab Khan Litigation Assistant for the respondents present.

2. Vide our detail Judgment placed on file, we are unison to disposed of the appeal in hand being not maintainable. However, appellant is at liberty to approach proper forum, if he so advised/desired. 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 4th day of September, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)

*M.Khan