

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.492/2022 titled "Syed Majid Ali versus versus Government of Khyber Pakhtunkhwa" alongwith six other appeals

S.No. of
Order &
Date of
proceeding

Order-18
25th
October,
2024.

**Order or other proceedings with signature of
Chairman/Member(s)/Registrar and that of parties or counsel where
necessary**

Present:

1. Mr. Arbab Saiful Kamal, Advocate, for the appellants.
2. Mr. Muhammad Jan, District Attorney for respondents.

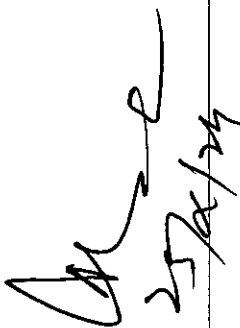
Kalim Arshad Khan, Chairman: Through this single order this appeal and the following connected appeals are being decided as all are of similar nature. Appeal Nos:493/2022, 494/2022, 495/2022, 496/2022 497/2022 and 498/2022.

2. Appellants cases in brief, as reflected from the record, are that they were serving in the Ministry of Social Welfare and Special Education, Islamabad; that pursuant to the 18th Constitutional Amendment, Act 2010 various Special Education and Social Welfare Centers under the Ministry of Social Welfare and Special Education Department, Islamabad were transferred to Social Welfare and Special Education & Women Empowerment Department, Khyber Pakhtunkhwa; that appellants' services were also transferred to the Province of Khyber Pakhtunkhwa, vide Notification dated 31.01.2018 and they were absorbed in the Provincial Civil Service; that while serving, the Federal Government Employees were allowed Health Professional Allowance as they were serving as professionals of the Health Department; that the said allowance was stopped which was challenged by the colleagues of the

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appellants before the Federal Service Tribunal, which was allowed vide consolidated judgment of the Federal Service Tribunal dated 18.07.2017; that the said judgment of the Tribunal was challenged before the august Supreme Court of Pakistan, however, the decision of the Federal Service Tribunal was upheld vide judgment dated 17.01.2018; that the appellants were in receipt of the Health Professional Allowance; that the Government of Khyber Pakhtunkhwa vide Notifications dated 23.02.2017 and 15.04.2016 also allowed Health Professional Allowance to the Doctors, Paramedics and Nursing Staff of Health Department; that vide impugned letter dated 03.10.2018, the said allowance was stopped; that feeling aggrieved of the said letter, they preferred writ petition No.5452-P/2018 before the Hon'ble Peshawar High Court, during the pendency of which, another Notification was issued on 25.11.2019 wherein, Health Allowance was allowed to devolved employees working in the Special Education Institutions from the date of their devolution to Provincial Government of Khyber Pakhtunkhwa and also mentioned that the allowance would be admissible only to the employees of Special Education Institutions from the date of their devolution; that the appellants had withdrawn the writ petition as they were of the view that their grievance had been redressed, however, the appellants were allegedly discriminated as they were also devolved employees in the same Directorate of Social Welfare, Special Education & Women Empowerment Department Khyber Pakhtunkhwa; that vide minutes of the meeting dated 29.07.2020 issued vide letter dated 19.08.2020, the respondents took a decision that the department would move a summary


25/08/24

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to Finance Department to allow one running basic pay as Health Allowance to all the employees of Special Education and directorate of Social Welfare, Special Education & Women Empowerment Department on the analogy of previous notification issued by Finance Department, but till date, no action was taken; that the writ petition filed by the appellants, was also dismissed for want of jurisdiction, hence, the instant service appeals.

3. Arguments heard. Record perused.

4. The appellants, formerly serving in the Ministry of Social Welfare and Special Education in Islamabad, assert that their services were transferred to Khyber Pakhtunkhwa following the 18th Constitutional Amendment. Despite initially receiving the Health Professional Allowance, it was discontinued, prompting a challenge that ultimately upheld their entitlement. While similar allowances were granted to health staff in Khyber Pakhtunkhwa, the appellants, as devolved employees in the same department, claim discrimination after the allowance was revoked for them. Although a subsequent notification acknowledged their right to the allowance, they allege that no action has been taken to implement this decision. Their writ petition was dismissed due to jurisdictional issues, leading to the current appeals:

5. Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 which is as under:

" 4. Any civil servant aggrieved by any final order, whether original or appellate made by a departmental authority in respect of any of the terms and conditions of

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his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later], prefer an appeal to the Tribunal having jurisdiction in the matter."

6. While the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, prescribe a procedure for filing an appeal before the Authority. The relevant provisions are as under:

"Right of Appeal:-(1) *A civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms and conditions of service may, within thirty days from the date of communication of the order to him, prefer an appeal to the appellate authority."*

7. Before filing an appeal in the Tribunal, there is a prior step to be taken by the appellant desirous to knock at the door of the Tribunal and that is a departmental representation, within 30 days of the order from which he/she feels to be aggrieved. In these cases, admittedly, there is no departmental representation, therefore, instead of straight away knocking out the appellants, we, in the interest of justice, deem it appropriate to treat these appeals as departmental appeals and send these to the department for decision in accordance with law and rules, within 60 days. Costs shall follow the event. Copy of this order be placed on files of the connected appeals. Consign.

7. *Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 25th day of October, 2024.*


(Muhammad Akbar Khan)
Member (I)


(Kalim Arshad Khan)
Chairman

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.492/2022

Date of presentation of Appeal 18.03.2022
Date of hearing 25.10.2024
Date of Decision 25.10.2024

Syed Majid Ali Shah, Assistant Social Welfare Officer, Population Welfare
Department, Khyber Pakhtunkhwa, Peshawar.....(*Appellant*)

Versus

1. **The Secretary Zakat, Usher, Social Welfare, Special Education & Women Empowerment Department, Peshawar.**
2. **The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 03.10.2018 OF RESPONDENT NO.1 WHEREBY THE HEALTH PROFESSIONAL ALLOWANCE WAS STOPPED TO THE APPELLANTS WITHOUT ANY LAWFUL JUSTIFICATION.


PRESENT

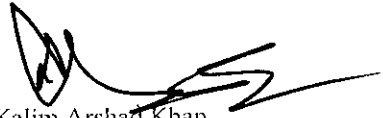
1. Mr. Arbab Saiful Kamal, Advocate, for the Appellant
2. Mr. Muhammad Jan, District Attorney, for respondents

| Appellants | Amount | Respondent | Amount |
|-----------------------------------|------------------|-----------------------------------|----------------|
| 1. Stamp for memorandum of appeal | Rs. Nil | 1. Stamp for memorandum of appeal | Rs. Nil |
| 2. Stamp for power | Rs. Nil | 2. Stamp for power | Rs. Nil |
| 3. Pleader's fee | Rs. Nil | 4. Pleader's fee | Rs. Nil |
| 4. Security Fee | Rs. 100/- | 4. Security Fee | Rs. Nil |
| 5. Process Fee | Rs. Nil | 5. Process Fee | Rs. Nil |
| 6. Costs | Rs. Nil | 6. Costs | Rs. Nil |
| Total | Rs. 100/- | Total | Rs. Nil |

Note: Counsel fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 25th day of October 2024.


Muhammad Akbar Khan
Member (Executive)


Kalim Arshad Khan
Chairman