05th Sept, 2024 Clerk to counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is busy in Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 24/10/2024 before the D.B. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (Executive)

(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

ORDER

24.10.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, Assistant Advocate General, for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the instant service appeal and the respondents are directed to grant the technical allowance or any other allowance having regard to the nature of their duties. Costs shall follow the event. Consign.

3. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24th day of October, 2024.

(KALIM ARSHAD KHAN)
CHAIRMAN

(MUHAMMAD AKBAR KHAN)
Member (E)

*M.KHAN

legitimate reason exists for excluding B.Tech holders, the appellants should be granted the same benefits.

11. For what has been discussed above, we are unison to accept all four service appeals and the respondents are directed to grant the technical allowance or any other allowance having regard to the nature of their duties. Costs shall follow the event. Consign.

12. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24th day of October, 2024.

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

M.Khan

engineers. Captioned appeals are accepted and disposed of in the above terms."

The said judgment was also maintained by the Supreme Court in Civil Appeal No. 1032 to 1036 of 2019, titled ***"Member Power (WAPDA), WAPDA House, Lahore and other Vs. Raja Javid Akhtar and others"***, by holding the Graduate Engineers eligible for Special Allowance. The relevant para is reproduced as under;

"After giving finding of fact that nature of job being performed by BPS-17 Engineers working in Engineering Cadres of WAPDA, either holding a degree of B.Tech Honor or being graduate in Engineer are the same, therefore, no discrimination for grant of this benefit can be made between the two because there is no rational nexus of object on the basis of intelligible differntia. We have examined the matter and are also of the view that the view taken by the Tribunal apparently does not suffer from any illegality nor any such has been pointed out to us by the learned ASC for the appellant. The appeals are therefore, dismissed"

10. The administrative body should reassess the criteria for the technical allowance to ensure it is applied uniformly. If no

08. The employees, though belonging to different formations of the government, are government/civil servants and cannot be differently treated regarding salary/allowances or other monetary package, rather, if they cannot be said to be employees of the civil secretariat, they can also be not said to be under privileged, disadvantaged, oppressed, minority groups, shudras and depressed lower class employees and they may be granted equal opportunities by extending the benefits in the shape of allowances suitable to their jobs, which shall not be less than the employees of equal status in the secretariat. We derive wisdom from the judgments of the Supreme Court of Pakistan particularly the above referred and reported as 2020 SCMR 1639, paragraph 14 (b) & (c).

09. In a similar nature matter, the Federal Service Tribunal in consolidated judgment dated 08.05.2018 titled "Raja Javed Akhtar & Others Vs. Wapda" granted Special Allowance to the Degree Holders from the date of its sanction, which is reproduced as under;

> ***"14. The above in view, appellants are held to be entitled to the Special WAPDA allowance from the date of sanctioning of Allowance to the graduate***

same position are receiving the allowance, while they are not, despite having a similar job description and qualifications of B.Tech. The notification dated 19.10.2018 states that technical allowance is available to engineers holding recognized engineering qualifications and registered with the Pakistan Engineering Council (PEC). The appellants holding B.Tech (Hon's) degree, argues that they are performing the same duties as their counterparts, who are receiving the allowance.

07. The appeals hinges on whether the distinction made between B.Tech holders and other engineering degree holders is justified or constitutes unlawful discrimination. Under the rules and law, decisions that differentiate between individuals performing the same role and having same qualification must be justifiable and not arbitrary. If the differentiation is solely based on the type of degree, it may be viewed as discriminatory unless there are legitimate reasons for such a classification. If the duties and responsibilities of the appellant align closely with those of his counterparts who receive the technical allowance, the failure to extend the allowance to him could be considered discriminatory, particularly if the only distinction is the type of degree held.

Pakhtunkhwa with effect from 1st November, 2018. The technical allowance was not extended to the B.Tech degree holders, which is illegal unlawful and without lawful authority and is based on clear discrimination. The appellants being aggrieved from the act and omission of the respondents by not allowing the technical allowance to the B.Tech degree holders, filed departmental appeals vide dated 23.05.2023, which is not yet responded even after the lapse of statutory period of 90 days, hence, the present service appeals.

03. On receipt of the appeals and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claims of the appellants.

04. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal, while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

06. The perusal of record reveals that the appellants claims discriminatory treatment, asserting that other engineers in the

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above four appeals, are jointly taken up, as all are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Brief facts of the case, as per contents of the appeals, are that the appellants are B.Tech (Hon's) Degree holder serving the C&W Department as SDO/Asst Engineer with great zeal and devotion. The cabinet approved technical allowance @1.5 time of the initial basic pay to all Engineers working in the provincial Government Department with effect from 1st July, 2018, irrespective of condition of registration with Pakistan Engineering Council (PEC). The same was notified vide FD(SO SR-II)8-7/2018-2019 dated 19.10.2018 issued by the Finance Department, Khyber Pakhtunkhwa, whereby Technical allowance has been allowed to Engineers holding Engineering qualification from the accredited engineering program of Higher Education Institution (HEI)/Universities duly recognized by Higher Education (HEC) and registered with Pakistan Engineering Council (PEC) serving against the sanction posts in C&W, irrigation, PHE & Local Government Department of Khyber

2. The Government of Khyber Pakhtunkhwa through Secretary C&W Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. The Government of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)

Present:

Mr. Zartaj Anwar, Advocate.....For the appellants
Mr. Naseer ud Din Shah, Assistant Advocate General ....For respondents

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"ON ACCEPTANCE OF THESE APPEALS, THE APPELLANTS MAY KINDLY BE ALLOW THE BENEFIT OF TECHNICAL ALLOWANCE IN REFERENCE TO THE NOTIFICATION DATED 19.10.2018, HAS BEEN ALLOWED TO THE COUNTERPART COLLEAGUES OF THE APPELLANTS OF THE SAME DEPARTMENT, WHILE PERFORMING THE SAME DUTIES WITH THE SAME JOB DESCRIPTION AND NOMENCLATURE I.E. SDO'S/ASSISTANT ENGINEER. IN LIGHT OF THE HIGHER EDUCATION COMMISSION'S DECISIONS APPROVAL/ORDERS OF THE MINISTRY OF EDUCATION, WATER & POWER DECLARATION OF PEC AND DECISIONS OF DIFFERENT COURTS OF LAW, THE DISCRIMINATORY TREATMENT METED OUT TO THE APPELLANTS IN REFERENCE TO THE TECHNICAL ALLOWANCE, AND DENYING THE SAME IS ILLEGAL UNLAWFUL AND UNLAWFUL AUTHORITY AND VIOLATIVE UPON THE RIGHTS OF THE APPELLANTS, FURTHERMORE THE RESPONDENTS MAY KINDLY BE DIRECTED TO ALLOW THE TECHNICAL ALLOWANCE TO THE APPELLANTS OR ANY OTHER RELIEF WHICH MAY NOT SPECIFICALLY ASKED FOR MAY ALSO BE AWARDED IN FAVOR OF THE APPELLANTS."

Service Appeal No.1920/2023 titled "Azhar Ali versus Government of Khyber Pakhtunkhwa through Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No. 1921/2023 titled "Muhammad Hamayun versus Government of Khyber Pakhtunkhwa through Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar and others" Service Appeal No. 1922/2023 titled "Farhat Ali versus Government of Khyber Pakhtunkhwa through Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar and others" and Service Appeal No. 1923/2023 titled "Ghazanfar Ullah versus Government of Khyber Pakhtunkhwa through Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar and others" declared on 24.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No.1920/2023

Date of presentation of Appeal.....21.09.2023
Date of Hearing.....24.10.2024
Date of Decision.....24.10.2024

Mr. Azhar Ali, SDO/Asst, Engineer C&W Department, Peshawar.....***(Appellant)***

Service Appeal No.1921/2023

Date of presentation of Appeal.....21.09.2023
Date of Hearing.....24.10.2024
Date of Decision.....24.10.2024

Muhammad Hamayun, SDO/Asst, Engineer C&W Department, Peshawar.....***(Appellant)***

Service Appeal No.1922/2023

Date of presentation of Appeal.....21.09.2023
Date of Hearing.....24.10.2024
Date of Decision.....24.10.2024

Mr. Farhat Ali, SDO/Asst, Engineer C&W Department, Peshawar.....***(Appellant)***

Service Appeal No.1923/2023

Date of presentation of Appeal.....21.09.2023
Date of Hearing.....24.10.2024
Date of Decision.....24.10.2024

Mr. Ghazanfar Ullah, SDO/Asst, Engineer C&W Department, Peshawar..... ***(Appellant)***

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.

MEMO OF COSTS
KHYBER PAKHTUNKHKWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1920/2023

Date of presentation of Appeal	21.09.2023
Date of hearing	24.10.2024
Date of Decision	24.10.2024

Mr. Azhar Ali, SDO/Asst, Engineer C&W Department, Peshawar.

... (Appellant)

Versus

The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.

The Government of Khyber Pakhtunkhwa through Secretary C&W Department, Civil Secretariat, Peshawar.

... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ACTS AND OMMISSIONS OF THE RESPONDENTS BY NOT ALLOWING TECHNICAL ALLOWANCE TO B.TECH DEGREE HOLDERS AGAINST WHICH THE APPELANT FILED DEPARTMENTAL APPEAL VIDE DATED 23.05.2023 WHICH IS NOT YET RESPONDED DESPITE THE LAPSE OF 90 DAYS OF STATUTORY PERIOD.

PRESENT

1. Mr. Zartaj Anwar, Advocate for the appellant
2. Mr. Naseer Uddin Shah, Assistant Advocate General for the 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 hand and the seal of this Court, this 24th day of October 2024.

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman