



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1134/2022

Syed Badshah

Versus

Government of Khyber Pakhtunkhwa

| S.No. of Order & Date of proceeding | Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary |
|--|--|
| <u>Order-17</u> 5 th November, 2024. | <p>Present</p> <ol style="list-style-type: none">1. Appellant in person.2. Mr. Naseer Uddin Shah, Assistant Advocate General for the respondents. <p>Appellant requested for adjournment on the ground that his counsel was busy before the Hon'ble Peshawar High Court, Abbottabad Bench. Being an old case of the year 2022, the same is adjourned for tomorrow on 06.11.2024 before D.B. P.P given to the parties.</p> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p>*Kaleemullah*</p> |


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Government of Khyber Pakhtunkhwa

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|---|--|
| Order-18 6 th November, 2024. | <p><u>Kalim Arshad Khan, Chairman</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Miss. Roeeda Khan, Advocate, on behalf of appellant.2. Mr. Naseer Ud Din Shah, Assistant Advocate General, on behalf of respondents.3. Vide our detailed judgment of today, we find no merit in the impugned order dated 16.11.2021 and, as a result, we set aside the order, accepting the appellant's service appeal. Costs shall follow the event. Consign.4. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 6th day of November, 2024</i> <p>(Rashida Bano) Member (J)</p> <p><i>*Mutazem Shah*</i></p> <p> (Kalim Arshad Khan) Chairman</p> |

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1134/2022

Date of presentation of Appeal 23.06.2022
Date of hearing 06.11.2024
Date of Decision 06.11.2024

Syed Badshah S/O Ex-Associate Professor Government College of Technology at Kohat.
.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary Khyber Pakhtunkhwa.
2. **Government of Khyber Pakhtunkhwa** through Secretary Industry, Commerce & Technical Education Department, Peshawar.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

PRESENT

1. Miss. Roeceda Khan, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General, 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 6th day of November, 2024.

Rashida Bano
Member (Judicial)


Kalim Arshad Khan
Chairman

10,89,452/—was not a one-time event. Had there been any illegitimate draws, the department should have intervened timely and initiated the necessary proceedings. Simply citing the excess amount as a justification does not absolve the respondents of their responsibility to address the matter in a timely and lawful manner.

7. Secondly, the appellant's provision of a stamp paper does not automatically justify the deductions. Even if any amount was due upon the appellant, the department was legally obligated to intimate him to offer his defense, as a fair trial was his fundamental constitutional right.

8. In light of the above considerations, we find no merit in the impugned order dated 16.11.2021 and, as a result, we set aside the order, accepting the appellant's service appeal. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 6th day of November, 2024.*


KALIM ARSHAD KHAN
Chairman

RASHIDA BANO
Member (Judicial)

Mutazem Shah

5. The appellant, having dedicated over 33 years of service to the department, retired as an Associate Professor (BPS-19) on 02.07.2021. He claims entitlement to a sum of Rs. 15,52,320/-, but only Rs. 4,62,868/- was paid to him as per the impugned order dated 16.11.2021. In response to the appellant's claim, the respondents argued that an outstanding amount of Rs. 10,89,452/- was owed by the appellant due to the irregular and excess drawl of remuneration from the second shift fund, as well as TA/DA claims paid from the government exchequer, which had been alleged by the audit team. Additionally, they contend that the appellant had voluntarily agreed, on stamp paper, to the deduction of any overpaid amounts from his pension or leave encashment.

6. It was incumbent upon the respondents to have properly scrutinized the appellant's financial dealings during his tenure to determine whether any unlawful drawls had occurred, as they claim. The deduction was imposed abruptly, without prior notice to the appellant. Only after the appellant's departmental appeal did the respondents provide the justification for the deduction, which was neither just nor in line with the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. It is also important to note that payments and claims are not processed easily; they are subject to a detailed verification process that includes checking bills and source forms. Thus, the withdrawal of such a substantial amount—Rs.



JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was initially appointed as Lecturer (BPS-17) on 21.10.1987 in the respondent department; that after getting promotions from time to time, he was retired from service as Associate Professor (BPS-19), on 02.07.2021; that total leave encashment of LPR on credit of the appellant was allegedly Rs.15,52,320/- which was clarified vide letter dated 30.08.2021; that vide the impugned order dated 16.11.2021 the amount was only Rs.4,62,868/- transferred in the bank account of appellant; that feeling aggrieved, he filed departmental appeal on 24.01.2022 which effort resulted into failure, hence, the instant appeal.

2. 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.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for respondents.

4. 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).

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
RASHIDA BANO ... **MEMBER (Judicial)**

Service Appeal No.1134/2022

Date of presentation of Appeal.....23.06.2022
Date of Hearing.....06.11.2024
Date of Decision.....06.11.2024

Syed Badshah S/O Ex-Associate Professor Government College of
Technology at Kohat.

.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary Khyber Pakhtunkhwa.
2. **Government of Khyber Pakhtunkhwa** through Secretary Industry, Commerce & Technical Education Department, Peshawar.
3. **Government of Khyber Pakhtunkhwa** through Secretary Establishment.
4. **Managing Director** Khyber Pakhtunkhwa TEVTYA, Peshawar through its Secretary, Peshawar.(*Respondents*)

Present:

Miss. Roeeda Khan, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 16.11.2021 WHEREBY AMOUNT RS.4,62,868/- HAS BEEN GRANTED/TRANSFERRED IN THE BANK ACCOUNT OF THE APPELLANT INSTEAD OF RS.1552320/- IN THE SHAPE OF LEAVE ENCASHMENT AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 24.01.2022 WHICH HAS BEEN DECIDED ON 23.02.2022 ON NO GOOD GROUNDS.

