

**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.**

Appeal No.1203/2022.

Ms. Kachkol Khan (Appellant)

VS

Secretary Population Welfare Department, Khyber Pakhtunkhwa and Others ...(Respondents)

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DEPONENT

Ahmad Yar Khan
Assistant Director (Lit)

1
①

**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.**

Appeal No.1203/2022.

M . Kachkol Khan (Appellant)

VS

Secretary Population Welfare Department, Khyber Pakhtunkhwa and Others ... (Respondents)

PARA-WISE REPLY/COMMENTS ON BEHALF OF THE RESPONDENTS NO.1 to 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the appellant has got no locus standi to file the instant service appeal.
2. That no discrimination / injustice has been done to the appellant.
3. That the instant service appeal is bad in the eye of law.
4. That the appellant has not come to this Tribunal with cleaned hands and has concealed material as well as legal facts.
5. The appeal is based on distortion of facts and is not tenable in eye of law.
6. That the appellant has been estopped by his own conduct to file the service appeal.
7. The present service appeal is based upon malicious/vexations and frivolous grounds.
8. That the service appeal is based on conjecture and surmises.
9. That the service appeal is not maintainable in its present form.
10. That the service appeal is bad for mis-joinder and non-joinder of the necessary parties.
11. That the appellant has filed the present service appeal contrary to Law and facts.
12. That Rule 9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 clearly laid down the procedure of willful absence which is **"Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government Servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice**

failing which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government Servant.

13. That proper procedure was adopted by the competent authority while passing the removal order of the appellant.
14. That the appellant was unable to show any cogent reason for obtaining leave for 2 months. Copy of the leave application submitted by appellant is attached as (Annex-A).
15. That it is very apparent on the face of his leave application by clearly regretting the same on the very next day and was accordingly informed about such rejection. In this regard he has been specifically issued letter No. 1(4)/2020-21/Admn dated 21-12-2021 about rejection of his leave application (Annex-B).
16. That the appellant has been remained absent from duty without any proper sanction. In this regard a proper explanation was issued to him vide letter No. 1(15)/2020-21/Admn dated 18-01-2022. Copy of the letter is attached as (Annex-C). The appellant did not respond to such explanation.
17. That the Competent Authority has issued a notice through registered AD vide letter No. 1(15)/2021-22/Admn dated 09-02-2022 by clearly directing to immediately resume the duty and explain the reason of his willful absence within 15 days from issuance of notice. Copy of the letter alongwith registered receipt is attached as (Annex-D & E).
18. That the Competent Authority after completing the codal formalities of rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 issued a show cause notice to him in two daily newspapers (Daily Nai Baat & Daily Mashriq Peshawar) dated 06-03-2022 and 08-03-2022 respectively. The appellant did not pay any heed to such notices and has not bothered to join/resum duty within the stipulated period. Copy of the newspapers is attached as (Annex-F & G).
19. That the Competent Authority after completing all the codal formality imposed major penalty of "Removal From Services" upon the appellant. Copy of the removal order is attached as (Annex-H).

20. That Fundamental Rule 67 provided that leave could not be claimed as of right and an application for leave should not be anticipated as grant of leave. Rules, Regulations and office procedure provided that a civil servant requiring leave was supposed to apply formally for it and as a matter of principle he could not and should not absent himself from office prior to sanction of leave. Mere submitting an application for leave ipso facto could not be construed to be sanction of leave. Prospective presumption had to be based on some legal ground. Civil Servant could leave his headquarter/ office only with prior approval of the competent Authority in order to avoid subsequent complications.
21. That the service appeal is **time barred** and warrants dismissal as the services appeal.
22. That the delay of each day is required to be explained by the appellant in filling of the petition beyond the limitation period. In this regard 1998 SCMR 1863 is referred.
23. That the appellant is required to give justifiable reasons for delay of each day. In this regard 1995 SCMR 1419 is referred.
24. That the appellant has neither explained nor made any attempt to explain the delay of each day. In this regard 1974 SCMR 425 & 1974 SCMR 492 are referred.

ON FACTS.

1. Para 1 of the Service Appeal pertains to record. Hence needs no comment.
2. Para 2 of the Service Appeal pertains to record. Hence needs no comment.
3. Para 3 of the Service Appeal pertains to record. Hence needs no comment.
4. Para 4 of the Service Appeal is incorrect. The respondents have completed all the codal formalities mentioned in rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
5. Para 5 of the Service Appeal is correct to the extent that the appellant has moved an application for leave on 14-12-2021 which was turn down/rejected by the Competent Authority because the appellant is chronic case of absenteeism as evident from his previous record. He is habitually remained absent from office. Copy of the explanations issued time and again to the appellant are attached as **(Annex-I,J,K,&L)**

- 6. Para 6 of the Service Appeal is Incorrect. The Competent Authority has completed all the codal formalities mentioned in rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 in case of willful absence.
- 7. Para 7 of the Service Appeal is Incorrect. The respondent under the Law was competent to take any action against any illegal Act.
- 8. Para 8 of the Service Appeal is Incorrect. Detail reply has already been given in Paras No. 18, 19 & 21 of the preliminary objections.
- 9. Para 9 of the Service Appeal is Incorrect. Detail reply has already been given in Paras No. 6 & 7 of the facts.
- 10. Para 10 of the Service Appeal is Incorrect. The appellant has been given proper opportunity of personal hearing on 17-06-2022 in the office of the Director General Population Welfare Khyber Pakhtunkhwa which he has attended and could not satisfy the Competent Authority about his willful absence. Thereafter the Departmental Appeal has been regretted being devoid of merit. Copy of the order on Departmental Appeal is attached as (Annex-M&N).

ON GROUNDS

- A. Para-A of the Service Appeal is incorrect. The appellant has been removed from service by keeping the norms of justice, facts and record.
- B. Para-B of the Service Appeal is incorrect. The appellant is habitual and chronic case of absenteeism as evident from his previous record. Detail reply has already been given in Para No. 5 of the facts.
- C. Para-C of the Service Appeal is Incorrect. The state of Pakistan and its Federation Units knows better public interest at large and doing it as per Law. Misinterpretation without reference to the contexts will give way to one according to his wishes to articulate. Furthermore not even a single right of the appellant has been violated nor the respondents acted against the Law.
- D. Para-D of the Service Appeal needs no comments. However, the respondents may raise any other ground with prior permission during the proceedings.

5

PRAYER:-

Keeping in view the above mentioned comment/reply, it is most humbly prayed that the instant appeal of the appellant may kindly be dismissed with cost.

asghar
21.11.22

Chief Secretary
Government of Khyber Pakhtunkhwa,
Peshawar.
Respondent No.1

for

asghar
21.11.22

Secretary
Population Welfare Department,
Khyber Pakhtunkhwa, Peshawar.
Respondent No.2

[Signature]

District Population Welfare Officer,
District Peshawar
Respondent No. 3

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**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER
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Appeal No.1203/2022.

Mr. Kachkol Khan (Appellant)

VS

Secretary Population Welfare Department, Khyber Pakhtunkhwa and Others ...(Respondents)

AFFIDAVIT

I Mr. Ahmad Yar Khan, Assistant Director (Litigation) Directorate General of Population Welfare, do solemnly affirm and declare that the contents of Para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed therein from this Honorable Court.

Ahmad Yar Khan

DEPONENT

CNIC: 17301-1165852-9

Cell No.0345-9023308

7

Date: 14/12/2021

231

THE DISTRICT POPULATION
WELFARE OFFICER, PESHAWAR.

SUBJECT: APPLICATION FOR THE TWO MONTHS STATION LEAVE

Sir,

May I draw your attention that I have an important work out of the city, due to which I will be out of station for the period of 2 months. For the said reason, I am unable to perform my duties and therefore it is requested to kindly grant me station leave for the said period w.e.f from 20/12/2021 to 20/02/2022.

I shall be very thankful to you for this act of kindness.

Thank you

Yours Sincerely

Mr. Kachkol Khan
Driver (DPWO Pesh)

Regretted

15/12/2021
DD Peshawar

Asstt.

Inform the applicant

15/12

1(4)

Staw Put order. Al

15/12

(1) N.T.C.
ASST. H. Commr.

(2) Helpline
Vector Mgrs

Ann-B 8820
2/20

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GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DISTT: POPULATION WELFARE OFFICER
Phase- VII Sector. E/8 Near Allied Bank Haji Camp Hayatabad Peshawar
Ph. No. 091-9219051




Dated Peshawar the 21/12/2021.

1(4)/2020-21/Admn


Mr. Kachkool (Driver)
District Population Welfare Office
Peshawar.

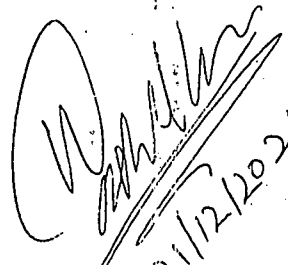
Subject:- **EARNED LEAVE**

I am directed to state that your application dated Nil for two months earned leave w.e.f. 20.12.2021 to 20.02.2022 is hereby regretted by the competent authority.


Dy. District Population Welfare Officer
Peshawar.

Copy to:
1. Personal File of the official concerned


Dy. District Population Welfare Officer
Peshawar.


21/12/2021

Dispatch No. 197-99
Date 21.12.21
Signature
Dy. District Population Welfare Officer
Peshawar

(9)

SS

Amc

GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER, PESHAWAR
Plot No.18, Sector E-8, Phase-VII Hayatabad, Peshawar
Phone No.091-9219051

F.No.1(15)/2020-21/Admn

Dated Peshawar the 18/1/ 2022.

To,

Mr. Kachkol, Driver
District Population Welfare Officer,
Peshawar

Subject: - **ABSENCE FROM DUTY EXPLANATION THEREOF**

It has been observed with great concern that your were found absent on 1st, 3rd, 6th, 7th, 17th, 18th Jan, 2022, from duty without any prior permission.

Your this act comes under misconduct. You are hereby directed to explain the reason of your willful absence and negligence from official duty within three days after the receipt of this letter, otherwise strict action will be taken against you under the rules.

/

Dy: District Population Welfare Officer
Peshawar

Copy to:-

1. Personal File of the official concerned.

/

Dy: District Population Welfare Officer
Peshawar

/

o/c
SP

Dispatch No. 1458-59
Date: 17/01/2022
Signature: [Signature]
Dy: PWO Peshawar

Ann D FE

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REGISTERED
AD

8250

GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER, PESHAWAR
Plot No.18, Sector E-8, Phase-VII Hayatabad, Peshawar
Phone No.091-9719051

E.No.1(15)/2021-22/Admn

Dated Peshawar the 09/02/2022.

To,

Mr. Kachkol, Driver
Shah Dhandh O/S Ganjh Moh, Waris Abad,
Shaheen Muslim Town, Peshawar.

Subject: -

NOTICE UNDER ^{RULE} 9 THE GOVERNMENT OF KP EFFICIENCY AND ^e DISCIPLINE RULES, 2011

I am directed to state that you are unauthorisedly absent from duty w.e.f. 27.01.2022 till date.

You are therefore directed to immediately resume duty and explain the reasons of your willful absence from duty within 15 days of issuance of this notice.

[Signature]
Dy: District Population Welfare Officer
Peshawar

Copy to:-

1. Personal File of the official concerned.

[Signature]
Dy: District Population Welfare Officer
Peshawar

Registration No. 155050
Date: 10/02/2022
Signature
D.P.W.O Peshawar

No. 603

For Stamp **RAD00276497** reverse Rs. Ps. 50.00

insured letters of not more than the initial weight prescribed in the Post Office Guide or on which no other postage is due.

Received a registered letter addressed to Dr. V. S. Rao Date Stamp 7.00

Initials of Receiving Office Shankar Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before (when necessary) (in words)

Insured for Rs. 5000 (in words)

If insured } Insurance fee Rs. 500 Ps. 100 (in words) Weight 100 Grams

Name and address of sender P. S. Rao 1072

Handwritten mark or signature in the bottom right corner.

(14) 3
Ann H

GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER
PLOT NO. 18, SECTOR E/8 NEAR HAJI CAMP PHASE-VII HAYATABAD,
PESHAWAR PHONE NO 0919219051

F.No.1 (15)/2021-22/Admn

Dated 29 /03/2022

OFFICE ORDER

Whereas Mr. Kachkol, Driver, BPS-06 is unauthorized absent from duty w.e.f 27/01/2022. He was served with a notice under Rule-9 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 vide registered (AD) memo of even number dated 09/02/2022.

And whereas he failed to respond to the notice within the stipulated time, therefore, Show Cause notice was served upon him through newspapers dated 08/03/2022 to resume duty and explain the reasons of his willful absence from duty within 15 days of its publication.

And whereas he failed to respond to the said notice till date.

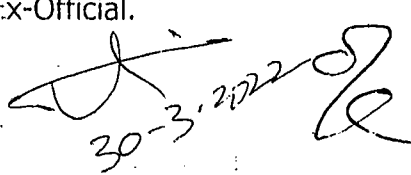
Now, therefore, I, Muhammad Aleem, District Population Welfare Officer, Peshawar being competent authority impose the major penalty of "Removal From Service" under Rule-4 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 upon Mr. Kachkol, Driver, BPS-06 with immediate effect.

-sd-

District Population Welfare Officer
Peshawar

Copy to:

- 1- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- PS to Deputy Commissioner, Peshawar.
- 3- PS to Director General, Population Welfare Department, KP, Peshawar.
- 4- Accountant (Local) for necessary action.
- 5- Mr. Kachkol, Ex-Driver, Shah Dhand, O/S Ganj, Moh: Waris Abad, Shaheen Muslim Town, Peshawar.
- 6- Personal File of Ex-Official.


District Population Welfare Officer
Peshawar

1741-46
23/03/2022
Peshawar

(15)

GOVERNMENT OF KHYBER PAKHTUNKHWA
OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER, PESHAWAR
Plot No.18, Sector E-8, Phase-VII Hayatabad, Peshawar
Phone No.091-9219051

Reminder-1

F.No:8(3)/2020-21/Admn

Peshawar Dated the 08/4/ 2021.

To

Mr. Kachkol Khan, Driver
District Population Welfare Office
Peshawar.

Subject:- EXPLANATION

Reference to this office letter of even number dated 15.02.2021 on the above cited subject and to state the reply from your end is still awaited.

You are once again directed to explain the reason of your willful absence within three days after the receipt of this letter, otherwise it shall be presumed that you have no defense to put in & strict action will be taken against you under the rules.

Dy: District Population Welfare Officer
Peshawar

Copy to:-

1. Personal File of the official concern.

Dispatch No 29-30
Date 08/04/2021


Dy: District Population Welfare Officer
Peshawar


Mr. Kachkol Khan Driver,
District Population Welfare Office,
Peshawar.

ABSENCE FROM DUTY - EXPLANATION THEREOF

It has been observed by the competent authority that you are found willfully absent from duty w.e.f 1st February, 2021 to 3rd February, 2021 and 10th February, 2021 to 11th February, 2021 without any information & prior permission.

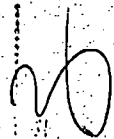
You are hereby directed to explain reasons of your willful absence within 03-days; otherwise disciplinary action will be initiated against you under the rules.


Dy: District Population Welfare Officer
Peshawar


Dy: District Population Welfare Officer
Peshawar

Copy to:

- 1. PA to DPW-Officer, Peshawar.
- 2. Personal File.

Dispatch No. 4942-44
 Date 2/3/2021
 Signed
 DPWO Peshawar 

GOVERNMENT OF KHYBER P
OFFICE OF THE DISTRICT POPULATION WELFARE OFFICER, PESHAWAR
Plot No.18, Sector E-8, Phase-VII Hayatabad, Peshawar
Phone & Fax No. 091-9219051

IWA
OFFICER, PESHAWAR

17

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No.8 (3)/2020-21/Admn

Dated Peshawar the 17/11/2021

D

1. Mr. Abdul Qayyum, Driver
2. Mr. Kachkol, Driver
District Population Welfare Officer Peshawar.

Subject: - **ABSENCE FROM DUTY EXPLANATION THEREOF**

It has been observed by the DDPW-Officer on 17.11.2021, that you were absent from duty without any permission.

You are hereby directed to explain the reason of your willful absence and negligence from official duty within three days after the receipt of this letter as to why not disciplinary action may be taken against you under the rules.

9
K Dy: District Population Welfare Officer
Peshawar

Copy to:-

1. Personal File of the officials concerned.

9
K Dy: District Population Welfare Officer
Peshawar

Dispatch No. 787-90
Date 22/11/2021
Signature
D. P. C. Peshawar

S(1)/2020-21/Insp.

Dated 18/6/2021.

1. Mr. Kachkol (Driver)
2. Mr. Abdul Qayyum (Dirver)
DPW-Office, Peshawar.

SUBJECT: EXPLANATION THEREOF

It has been observed with grave concern by the undersigned that you were found absent on 18.06.2021 at 10:15 AM and you were absent from duty without any prior permission / intimation to the DPW-Office, which fall you in the act of "misconduct".

You are therefore directed to explain reason for your absence within 3 days after receipt of this letter, failing which ex-parte action will be initiated against you under the rules.

District Population Welfare Officer
Peshawar

Copy to:-
Personal file of the Official concerned.


District Population Welfare Officer
Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE GENERAL, POPULATION WELFARE
Plot No.18, Sector E-8, Phase-7, Hayatabad, Peshawar

197

F. No. 4(21)/2022/Admn 15912-15
Dated Peshawar the 12/6/2022

To,

Mr. Kachkol Khan
Ex-Driver (BSP-06)
C/O DPWO, Peshawar.

Dialy No. 4246
Dated... 13/6/2022
Signature...
DPWO Peshawar

Subject: - APPLICATION/DEPARTMENTAL APPEAL AGAINST THE IMPUGNED OFFICE ORDER NO F.1(15)2021-22/ADMN DATED 29.03.2022 PASSED BY DISTRICT POPULATION WELFARE OFFICER PESHAWAR

I am directed to refer to your subject appeal dated nil against the impugned office order No. 1(15)2021-211/Admn dated 29.03.2022 and to state that the Appellate Authority has been pleased to grant the opportunity of personal hearing on 17.06.2022 at 10:30AM in the office of Director General, Population Welfare, Khyber Pakhtunkhwa, Peshawar.

You are therefore advised to attend the said office on the mentioned date & time.

(Arif Abbas)

Assistant Director (Admn)

Copy to:-

1. DPWO, Peshawar for information and with the request to inform the appellant accordingly under intimation to this office please.
2. PS to Director General, Population Welfare, Khyber Pakhtunkhwa Peshawar.
3. Master File Admn Section.

Assistant Director (Admn)

inform
DPWO Peshawar
13/6/2022
ADPWO (i)
ADPWO
13/6



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE GENERAL, POPULATION WELFARE
Plot No.18, Sector E-8, Phase-7, Hayatabad, Peshawar

20

F. No. 4(21)/2022/Admn 14135-38
Dated Peshawar the 23/6/2022

To,

Mr. Kachkol Khan
Ex-Driver (BSP-06)
C/O DPWO, Peshawar

Daily No. 4785
Dated 28/6/22
Signature
DPWO Peshawar

Subject: - APPLICATION/DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED OFFICE ORDER NO F.1(15)2021-22/ADMN DATED
29.03.2022 PASSED BY DISTRICT POPULATION WELFARE
OFFICER PESHAWAR

I am directed to refer to your departmental appeal dated nil received on the subject cited above and consequent upon your personal hearing on 17.06.2022, the Competent Authority after examining the contents of your appeal comparatively with the available record of DPW-Office, Peshawar & hearing you in person, has been pleased to regret your subject appeal being devoid of merit.

(Arif Abbas)
Assistant Director (Admn)

Copy to:-

1. DPWO, Peshawar for information.
2. PS to Director General, Population Welfare, Khyber Pakhtunkhwa Peshawar.
3. Master File Admn Section.

Assistant Director (Admn)

27/6/2022
DDPWO (N.T.)
ADPWO
keep it in record
14157
27/6
27/6
7/5

**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR.**

Appeal No.1203/2022.

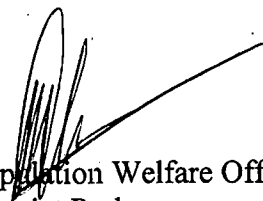
M. Kachkol Khan (Appellant)

VS

Secretary Population Welfare Department, Khyber Pakhtunkhwa and Others ... (Respondents)

AUTHORITY LETTER

Mr. Ahmad Yar Khan Assistant Director (Litigation), Directorate General Population Welfare Khyber Pakhtunkhawa is hereby authorized / nominated on behalf of respondent to submit comment/reply in the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar.



District Population Welfare Officer,
District Peshawar
Respondent No. 3