

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

Appeal No.1369/2022.

Dr. Sabiha Moeen (Appellant)

VS

Government of Khyber Pakhtunkhwa through Secretary Population Welfare Department, and
Others(Respondents)

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DEPONENT

Ahmad Yar Khan
Assistant Director (Lit)

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

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VS

Government of Khyber Pakhtunkhwa through Secretary Population Welfare Department, and Others(Respondents)

PARA-WISE REPLY/COMMENTS ON BEHALF OF THE RESPONDENTS NO.1 to 4

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the appellant has got no locus standi to file the instant service appeal.
2. That no discrimination / injustice have 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 Competent Authority issued a notice through Registered AD vide letter No. SOE(PWD)1-9/2009/PF/2575-78 dated 05-07-2022 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-A &B).
- 15. 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 her in two daily newspapers (Daily Mashriq Peshawar & Daily Quaid) dated 05-11-2021 and 04-11-2021 respectively. The appellant did not pay any heed to such notices and has not bothered to join/resume duty within the stipulated period. Copy of Newspapers is attached as (Annex-C&D).
- 16. That the Competent Authority after completing all the codal formality imposed major penalty of "Removal From Services" upon the appellant. Copy of Removal Order is Attached as (Annex-E)
- 17. 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 she could not and should not absent herself 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.
- 18. That the service appeal is time barred and warrants dismissal as the services appeal.

- 19. 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.
- 20. That the appellant is required to give justifiable reasons for delay of each day. In this regard 1995 SCMR 1419 is referred.
- 21. 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. However the respondent was Removed From Service due to her willful absence from the official duty/office.
- 3. Para 3 of the Service Appeal pertains to record. Hence needs no comment.
- 4. Para 4 of the Service Appeal is incorrect. Detail reply has already been given in Para-17 of Preliminary Objections. Moreover the respondent No. 4 is not a competent authority to verbally allowed the leave of the appellant; for obtaining leave there is a proper procedure which needs to be adopted but the appellant has not adopted any procedure and remained absent without any approval of the competent authority.
- 5. Para 5 of the Service Appeal is correct to the extent that the appellant has moved an application for leave on which was turn down/rejected by the Competent Authority because the appellant is chronic case of absenteeism as evident from her previous record. The appellant is habitually remained absent from office.
- 6. Para 6 of the Service Appeal is Incorrect. The respondent No.4 has issued a notice on her home address titled as "Absence Notice" vide letter No. SOE(PWD)1-9/2009/PF/2575-78 to which the appellant had not paid any heed.
- 7. Para 7 of the Service Appeal is Incorrect. The appellant was removed from service on 21/04/2022 under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.


8. Para 8 of the Service Appeal is Incorrect. The departmental appeal was filed at a wrong forum which was communicated to her vide letter No. 2(1)/2022/Admn dated 30/06/2022. *Attached as Annex "f"*
9. Para 9 of the Service Appeal needs no comments. However the respondents seek leave of this Hon'able court to raise any other ground at the time of arguments.


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 by completing all the codal formalities by the competent authority.
- B. Para-B of the Service Appeal is incorrect. The competent authority has completed all the formalities that are required under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
- C. Para-C of the Service Appeal is Incorrect. There is no question of regular inquiry as the appellant was not attending office nor responding to notices issued to her home address as well as published in newspaper. The Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 have laid down the procedure of which was completely followed by the respondents.
- D. Para-D of the Service Appeal is Incorrect. Detail reply has already been given in paras-15 and 17 of the Preliminary Objections.
- E. Para-E of the Service Appeal is Incorrect. The appellant was Removed From Services due to her willful absence from the official work/office.
- F. Para-F of the Service Appeal is Incorrect. The appellant has not served the department with entire satisfaction and habitually remained absent from her official duty.
- G. Para-G of the Service Appeal is Incorrect. Detail reply has already been given in Para-17 of the Preliminary Objections.
- H. Para-H of the Service Appeal needs no comments. However the respondents seek permission to raise any additional ground at the time of arguments.


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.

for 
Chief Secretary 30.01.23
Government of Khyber Pakhtunkhwa,
Peshawar.
Respondent No.2


Secretary 30.01.23
Population Welfare Department,
Khyber Pakhtunkhwa, Peshawar.
Respondent No.1


Director General
Population Welfare Department
Khyber Pakhtunkhwa
Respondent No.3


Section Officer (Establishment)
Population Welfare Department
Khyber Pakhtunkhwa
Respondent No.4

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**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER
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VS

Government of Khyber Pakhtunkhwa through Secretary Population Welfare Department, 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



Through Registered AD

GOVERNMENT OF KHYBER PAKHTUNKHWA,
POPULATION WELFARE DEPARTMENT
2nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar

No. SOE(PWD)1-9/2009/PF/2575-78
Dated Peshawar the 05th July, 2021


To

Dr. Sabiha Moeen Orakzai D/O Maj @ Moeen Khan Orakzai,
WMO/Incharge RHSC-A Nowshera,
House No. 34-F, Army Officers' Colony-02,
Qayyum Stadium Road,
Peshawar Cantt:

Subject: - **ABSENCE NOTICE.**

I am directed to refer to the report of District Population Welfare Officer Nowshera, conveyed to this Department vide Directorate General Population Welfare, Khyber Pakhtunkhwa letter No. 2(1)/2021/Admn/1928-32 dated 24-06-2021, you have remained absent from official duties with effect from 01-03-2021 without any intimation/information. As such you have rendered yourself to be proceeded against under Rule-9 of the Khyber Pakhtunkhwa Government Government Servants (Efficiency & Discipline) Rules, 2011, for your willful absence from official duty.

2. You are, hereby directed to report for duty within fifteen (15) days of the receipt of this letter, failing which an ex-parte decision shall be taken against you under the rules *ibid*.


(LAL SAEED KHATTAK)
SECTION OFFICER (ESTT)

Endst: of Even No. & Date:

Cc to the: -

1. Director General Population Welfare Khyber Pakhtunkhwa w/r to his letter quoted above with the direction to inform the doctor concerned through registered acknowledgement to resume duty within the stipulated period.
2. District Population Welfare Officer, Nowshera with the similar directions.
3. PS to Secretary Population Welfare Department, Khyber Pakhtunkhwa.


SECTION OFFICER (ESTT)

No. 1323

For Insurance Notices see reverse.
Stamps affixed except in case of
uninsured RGL58385373
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due

Rt. Ps.
50

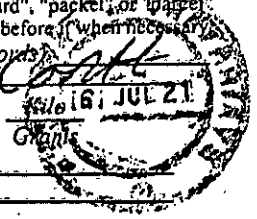
Received a registered
addressed to

Dr. Sobhana Moeen
Date-Stamp

*Write here "letter", "postcard", "packet", or "package"
Instructions of Receiving Officer with the word "insured" before, (when necessary)

Insured for Rs. (in figures) Rs. 1000/- (in words)

Weight 100 gms
Insurance fee Rs. ___ Ps. ___ (in words)



Name and
address
of sender



GOVERNMENT OF KHYBER
PAKHTUNKHWA,
POPULATION WELFARE
DEPARTMENT

02nd Floor, Abdul Wali Khan
Multiplex, Civil Secretariat, Peshawar

ABSENCE NOTICE

You (Dr. Sabiha Moeen, WMO (BPS-17), RHSC-A Nowshera resident of House No. 34-F Army Officers Colony-02 Qayyum Stadium Road, Peshawar Cantt: are wilfully absent from duty w.e.f. 1/03/2021 without prior intimation/information.

2. You were issued Notice on your home address vide letter No. SOE(PWD)1-9/2009/PF/ 2575-78 dated 05-07-2021 through Registered AD. wherein you were directed to resume your duty immediately but you neither attended the office to clarify the matter nor submitted / posted any letter to show any interest towards your duty within due time-frame.

3. Thus you are finally informed via this Notice in accordance with Rule-9 of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 to immediately resume your duties in your own interest within 15-days of the publication of this Notice and explain the reason(s) of your willful absence, failing which it will be presumed that you are no more interested in your service thus ex-parte action will be taken against you under the Khyber Pakhtunkhwa Civil Servants (Efficiency and Discipline) Rules, 2011, which will lead to major penalty of "Removal from Service".

SECTION OFFICER (ESTABLISHMENT)
GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT

Phone No. 091-9223623

"Take Special Care of
Special Persons"

Our Faith,
Corruption
Free Pakistan

ہمارا ایمان
کریپشن فری پاکستان

Inf. (P) 5582/2021

[Handwritten signature]

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پہلے کیوں نہیں بتایا؟ کبھی کو اتنی عزت تو دی جاتی کہ نہ سے کم عمر بچے عمر اور خزانہ کے اجازت ناموں کے ساتھ
آنے کا تادیباً تادیباً قانون کو اجلاس کا نوٹس بھی موصول پورا نہیں کرتے۔ وزارت کی جانب سے کہا گیا ہے کہ 12

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GOVERNMENT OF KHYBER PAKHTUNKHWA,
POPULATION WELFARE DEPARTMENT
02nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar

ABSENCE NOTICE

You (Dr. Sabiha Moeen, WMO (BPS-17), RHSC-A Nowshera resident of House No. 34-F Army Officers Colony-02 Qayyum Stadium Road, Peshawar Cantt: are wilfully absent from duty w.e.f. 1/03/2021 without prior intimation / information.

2. You were issued Notice on your home address vide letter No. SOE(PWD)1-9/2009/PF/ 2576-78 dated 05-07-2021 through Registered AD, wherein you were directed to resume your duty immediately but you neither attended the office to clarify the matter nor submitted / posted any letter to show any interest towards your duty within due time-frame.

3. Thus you are finally informed via this Notice in accordance with Rule-9 of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Discipline) Rules, 2011 to immediately resume your duties in your own interest within 15-days of the publication of this Notice and explain the reason(s) of your willful absence, failing which it will be presumed that you are no more interested in your service thus ex-parte action will be taken against you under the Khyber Pakhtunkhwa Civil Servants (Efficiency and Discipline) Rules, 2011, which will lead to major penalty of "Removal from Service".

SECTION OFFICER (ESTABLISHMENT)
GOVERNMENT OF KHYBER PAKHTUNKHWA
POPULATION WELFARE DEPARTMENT
PHONE Number: 091 9999999

Daisy Quaid Peshawar
04/11/2021



GOVERNMENT OF KHYBER PAKHTUNKHWA,
POPULATION WELFARE DEPARTMENT
02nd Floor, Abdul Wali Khan Multiplex, Civil Secretariat, Peshawar
FACE BOOK & TWITTER @PWDPK

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Dated Peshawar the 21st April, 2022

NOTIFICATION

No. SOE (PWD) 1-9/2009/PE: WHEREAS, Dr. Sabiha Moeen, WMO (BPS-17), Incharge RHSC-A Nowshera was absent from duty w.e.f 01-03-2021. She was required to join the duty as the request of the lady officer for earned Leave was regretted, still she absented herself from duty without intimation to Population Welfare Department.

2. AND WHEREAS, a notice was issued to her on her home address vide letter No. SOE (PWD)1-9/2009/PF/2575-78 Dated 5th July, 2021 directing her to resume duty within fifteen (15) days of the receipt of the notice under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and in case of failure, disciplinary action would be initiated against her under the rules ibid;

3. AND WHEREAS, the lady officer did not report for duty within the stipulated period and in order to proceed further under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, notice was published in Daily "Mashriq Peshawar on 05.11.2021 and Daily "Quaid Peshawar on 04.11.2021 directing her to resume duty within 15 days of publication of the notice and intimate the cause of her absence, failing which ex-parte decision would be taken against her under the relevant law / rules;

4. AND WHEREAS, the stipulated period expired on 19.11.2021 and the officer did not resume her duty.

5. NOW THEREFORE, the Chief Secretary, Khyber Pakhtunkhwa being the competent authority, has been pleased to impose major penalty of "Removal From Service" upon Dr. Sabiha Moeen, WMO (BPS-17), Incharge RHSC-A Nowshera under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, with immediate effect. The absence period w.e.f. 01-03-2021 till date is treated as unauthorized absence from duty.

Chief Secretary
Khyber Pakhtunkhwa

Endst: No. SOE (PWD) 1-9/2009/PE: 792-26 Dated Peshawar the 21st April, 2022

Copy forwarded for information & necessary action to the: -

1. Director General Population Welfare, Khyber Pakhtunkhwa, Peshawar.
2. District Population Welfare Office, Nowshera.
3. District Account Officer, Nowshera.
4. PS to Chief Secretary, Khyber Pakhtunkhwa.
5. PS to Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.
6. PS to Secretary, PWD, Khyber Pakhtunkhwa, Peshawar.
7. Officer concerned.

(SAID BACHA)
Section Officer (Establishment)
Population Welfare Department
Phone No. 091-9223623

3



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

F.No.2(1)/2022/Admn
Dated Peshawar the 30/6/2022.

To

Dr. Sabina Moeen
Ex-WMO (BPS-17)
C/O DPW/-Office, Nowshera.
House # 34-F, Army Officers Colony-02
Qayyum Stadium Road, Peshawar Cantt.

Subject:- **DEPARTMENTAL AGAINST THE ORDER REF NO. SOE (PWD)1-9/2009/PF DATED 21TH APRIL, 2022 OF THE CHIEF SECRETARY KHYBER PAKHTUNKHWA, WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE UNDER RULE-9 OF THE KHYBER PAKHTUNKHWA GOVT. SERVANTS (EFFICIENCY & DISCIPLINE) RULES, 2011 ON ACCOUNT OF LONG ABSENCE FROM DUTY**

I am directed to refer to your subject appeal dated 09.06.2022 and to state that major penalty i.e. "Removal from Service" was awarded to you by the Administrative Department. Therefore, it is advised to approach the office of appellate authority rather this office. It may also be noted that the said appeal has not even signed by you which is mandatory besides thumb impression.

(Arif Abbas)

o/l Assistant Director (Admn)

Copy to:-

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

o/l Assistant Director (Admn)

Issued vide no.- 4328-30.

[Signature]

30/6/2022.

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VS

Government of Khyber Pakhtunkhwa through Secretary Population Welfare Department, 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