

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL PESHAWAR.**

Khyber Pakhtunkhwa  
Service Tribunal

**Service Appeal No: 935/2022**

Case No. 3407  
Date: 3-2-2023


Hafiz Jamshed Khan, Ex-SST, GMS Kalagay District Swat.....Appellant.

**VERSUS**

Government of Khyber Pakhtunkhwa through the Secretary E&SE &  
other.....Respondents

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Assistant Director (Lit: II)  
E&SE Department, Khyber  
Pakhtunkhwa, Peshawar.

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**VERSUS**

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other.....Respondents.

**JOINT PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No: 1-3.**

Respectfully Sheweth:-

The Respondents submit as under:-

**PRELIMINARY OBJECTIONS.**

- 1 That the Appellant has got no cause of action & locus standi to file the instant appeal before this Honorable Tribunal.
- 2 That the Appellant is not an aggrieved person within the meaning of Article-212 of the Constitution of Islamic Republic of Pakistan 1973.
- 3 That the Appellant has concealed material facts from this Learned Bench in the titled matter.
- 4 That the Appellant has not come to this Learned Tribunal with clean hands.
- 5 That the matter in hand is bad for mis-joinder & non-joinder of the necessary parties.
- 6 That the impugned Notification No. 5347-49/F.No. 414/SST (M) Disciplinary actions Swat dated 28-2-2022 of the Respondent No.2 is legally competent & liable to be maintained in favor of the Department.
- 7 That the appellant has been treated as per law rules and procedure by the Department prior to the issuance of the Notification dated 28-2-2022 after observing all the required codal formalities under the rules in field.

*M. J. Khan*

- 8 That the appellant is a habitual duty defaulter/absconder and has been found guilty of willful absence from duty against the SST post resulted in the aforementioned Notification dated 28-2-2022 against the appellant of the Respondent Department.
- 9 That the as per Travel history obtained from the FIA Govt; of Pakistan, the appellant has traveled abroad without formal approval/sanction & NOC from the competent authority & have found guilty of mis-conduct.
- 10 That fair & formal opportunity of personal hearing has been provided to the appellant, wherein, he did not bother to appear before the committee in the Directorate of (E&SED) KPK Peshawar on malafide intentions.
- 11 That the order dated 25-1-2022 is legally competent & liable to be maintained in favor of the Respondent Department.
- 12 That the matter regarding irregular period has been reported by the AG office vide Notification No. SO (Audit)/E&SED/3-38/DA 2019-2020 dated 24-5-2022 under the advance Para No. 534 for the period 2020-2021, deducted March, 2022 to the tune of Rs. 2158672, whereupon, the recovery of the said amount is still out standing against the appellant in view of the Notification dated 28-2-2022 under rules (1) (b) (ii) of E&D Rules 2011 on account of illegal drawl against the SST (G) BPS-16 post as mentioned in the impugned Notification dated 28-2-2022.

### ON FACTS.

- I. That Para-I needs no comments being relates to the appointment against the TT post vide appointment order dated 30-10-1986 in the Respondent Department.
- II. That Para-II is also needs no comments.
- III. That Para-III is incorrect and denied on the grounds that as per report of the DEO (M) Swat that the appellant remained abroad for several times during his service without taking any kind of formal leave sanction/NOC or permission from the Department vide his office letter No. 5635 dated 07-6-2021 attached as **(Annexure-A)** for perusal and ready reference & report of the DEO (M) Swat was also confirmed/verified by the FIA dated 11-3-2021 attached as **(Annexure-B)** for ready reference. Therefore, the stand & plea of the appellant is illegal, without any cogent substances & record, hence, liable to be rejected in favor of the Department.

- IV. That Para-IV is correct to the extent of serving a show cause Notice upon the appellant on dated 26-7-2021 by the Respondent No.2 in view of the facts and circumstances of the case mentioned in para-III of the present reply by the Department before this learned Bench attached as **(Annexure-C)** for ready reference and the relevant part of the aforementioned show cause Notice is hereby re-produced as under:-
1. That you have (the appellant) abroad numerous time without taking permission from the Department nor taken Ex-Pakistan Leave.
  2. You have been called by the DEO (M) Swat for personal hearing for justification and provision of record, however, you failed to do so.
  3. I am satisfied that you (the appellant) have guilty at misconduct as specified in Rules 3 (b) of (E&D) rules 2011. Thus you the appellant have rendered have yourself liable to be proceeded against the said rule.
- V. That Para-V is also correct to the extent of submission of reply to the aforesaid show cause Notice dated 26-07-2021 in an unsatisfactory manner by concealing and mis-representing the actual facts and circumstance of the case in hand from the Respondent Department on mala fide intentions just to avoid Departmental proceedings/action in view of the Rules 3 (b) of (E&D) Rules 2011 against the SST (G) BPS-16 post in the Department by the appellant and a copy of the reply to the show cause notice is attached as **(Annexure-D)** for ready reference.
- VI. That Para-VI is incorrect & denied as detailed reply to this para has already been given in the foregoing paras of the present reply by the respondents, hence needs no further comments.
- VII. That Para-VII is correct that in view of the facts & circumstance of the case under study as narrated in the forgoing paras including para-III, an inquiry was conduct vide memo No. 784 dated 23-9-2019 by the Department through the Principal GHSS Foteh Mur District Swat who submitted his inquiry report to the DEO (C) which was resulted in the warning served upon the appellant vide memo No. 3593 dated 29-10-2019 under the signatures of the DEO (M) Swat with a "Warning" to the appellant for taking due care in future and to refrain from going abroad without the sanction of leave/NOC from the competent authority attached as **(Annex-E)** for ready reference but in spite the said warning, the appellant has not refrain from going abroad without NOC/formal approval or leave sanction of the competent authority.
- VIII. That Para-VIII is also correct that the matter regarding abroad was once again, hence, reported and taking of the said complaint against the appellant, an inquiry was conducted vide letter/order No.7240-41 dated 03-02-2020 through the Principal GHSS Miandam District who submitted

his inquiry report vide his office memo No. 4017 dated 15-02-2020 in an un-satisfactory manner without touching the actual controversy of going abroad of the appellant as per complaint which was turndown by the Department on the grounds of being mis-directed end even against the facts of the case. **(Copy of the inquiry report is Annexure-F).**

- IX.** That Para-IX is correct to the extent of letter No. 10557 dated 26-10-2020, whereby, the appellant was directed to provide detail record of his leave history to the Department including the record of Ex-Pakistan Leave which he did not produce before the authority concerned for perusal & verification and a copy of the letter dated 26-10-2020 is attached as **(Annexure-G)** for ready reference, hence, the claim of the appellant regarding submission of the required leave sanction/NOC of Ex-Pakistan leave etc is illegal and liable to be rejected.
- X.** That Para-X is correct to the extent of show cause Notice to the appellant whereby, he was directed to submit reply to the said show cause Notice under the required rules & procedure to the Respondent Department which he did not, attached as **(Annexure-H)** for ready reference. Hence, the claim of the appellant is illegal and liable to be rejected in favor of the Department.
- XI.** That Para-IX is correct that vide letter dated 06-09-2021, the appellant was called for his personal hearing under the rules by the department and a copy whereof is attached as **(Annexure-I)** for ready reference.
- XII.** That Para-XII is also correct to the extent of complaint against the appellant regarding his obtaining passport from the Ministry of Interior Govt; of Pakistan in 1997, wherein, he has not his mentioned his Govt; service against the said post nor has obtained NOC from the quarters concerned for his 05 years continuous stay in Dubai without formal approval leave sanction/NOC from the Respondent Department which fact has also been proved against the appellant during the course of Departmental proceedings under the relevant provision of E&D Rules 2011 resulted in the aforesaid order against him and a copy of the said complaint is attached as **(Annexure-J)** for ready reference.
- XIII.** That Para-XIII is incorrect & misleading on the grounds as stated in the forgoing paras by the Respondents in the titled case, hence, the plea of the appellant is illegal without any cogent proof & justification and liable to be rejected.
- XIV.** That Para-XIV is also incorrect on the grounds that as per Travel History obtained from the FIA, the appellant has been found guilty of going to Dubai/aboard again & again but without formal leave sanction/NOC for Ex-Pakistan leave and permission of the competent authority & copy of the said Travel history of FIA is attached as **(Annexure-K).**

- XV. That Para-XV is correct to the extent of major penalty of compulsory retirement from service of the appellant vide the impugned order dated 28-2-2022 issued by the competent authority after all the required Codal formalities under the relevant Rules & procedure by the Department attached as **(Annexure-L)** for ready reference.
- XVI. That Para-XVI is also incorrect & even misleading on the grounds that vide Notification dated 25-7-2022, the Departmental appeal of the appellant has been rejected under Rule-17 (2) (a) of E&D Rules 2011 by uploading the impugned order & Notification by the competent authority.
- XVII. That Para-XVII is incorrect in view of the Notifications dated 28-2-2022 & 25-7-2022, respectively therefore, the stance of the appellant regarding performing his duty is itself an illegality on the part of the appellant as he is no more a regular Civil Servant in the Department. Therefore, the appeal in hand is liable to be rejected on the following grounds inter alia:-

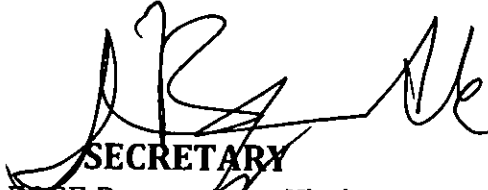
**GROUND:-**

- a) **Incorrect & not admitted.** The plea of the appellant is illegal and even against the facts of the case as he has been treated as per law, rules & procedure by the department in the titled case by the department.
- b) **Incorrect & not admitted.** On the grounds that the appellant has been treated as per law & rules a evident from the memo No. 6060 dated 29-5-2022 addressed to the Secretary E&SED KPK from the Directorate of E&SE. therefore, the stand of the appellant is liable to be rejected.
- c) **Incorrect & not admitted.** On the grounds that the letter dated 29-5-2022 would further clarify the stance of the Department as the appellant is misleading this Learned Bench in the titled matter for his vested interest.
- d) **Incorrect & not admitted.** The statement of the appellant is against the facts of the case as submitted in the foregoing paras of the present reply by the Respondent, hence, the stand of the appellant is liable to be dismissed.
- e) **Incorrect & not admitted.** On the grounds that the appellant has been found guilty of willful absence from duty against the noted post by the Department in the titled matter by the Department as evident from the available on record, hence, the stand of the appellant is liable to be rejected with the additional submission for seeking leave of this learned Bench to submit additional record grounds and case law at the time of arguments on the date fixed please.

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Therefore, in view of the above made submissions, the appeal in hand may kindly be rejected in favor of the Department in the interest of justice.

Dated. \_\_\_/\_\_\_/2023.

  
**SECRETARY**

E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 1)

  
**DIRECTOR**

E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondents No: 2 & 3)

**AFFIDAVIT**

**I. Dr. Hayat Khan Assistant Director (Litigation-II)** E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief.

  
**Deponent**

**ATTESTED**

