

2/5/2023

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
SERVICE APPEAL NO. 540/2023

Muhammad Jamil Son of Buzarg Muhammad Resident of Amankot, Tehsil Babuzai District Swat.

..... (APPELLANT)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education at Block-A Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa at Civil Secretariat at Peshawar.
3. Chairman Board of Intermediate & Secondary Education Saidu Sharif Swat at Kokrai, Saidu Sharif Swat.
4. Director Treasuries & Accounts, Khyber Pakhtunkhwa at Peshawar.
5. District Comptroller of Accounts Swat at Saidu Sharif Swat.

..... (RESPONDENTS)

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 2, 4 & 5

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Deponent

Dated:



Rooh Ullah,
District Comptroller of Accounts, Swat
CNIC No.

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No 540/2023

Muhammad Jamil Son of Buzarg Muhammad Resident of Amankot, Tehsil Babozai District Swat.

.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education at Block-A Civil Secretariat, Peshawar and Others.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa at Civil Secretariat Peshawar.
3. Chairman Board of Intermediate & Secondary Education Saidu Sharif Swat at Kokari, Saidu Sharif Swat.
4. Director Treasuries & Accounts, Khyber Pakhtunkhwa at Peshawar.
5. District Comptroller of Accounts, Swat at Saidu Sharif Swat.

.....Respondents

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 2,4 & 5.

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTIONS:

1. That without prejudice to the following, the appeal is bad, both in form as well as in substance.
2. That the appeal is not at all maintainable in its present form as it is against the fact and rules.
3. That the appellant neither has any locus standi nor a cause of action to approach this Honorable Tribunal.
4. That the appellant has tried to twist and bend the true picture of the matter from this honorable Tribunal for his own advantage/benefit.
5. That the appeal is badly time barred and not entertainable in its present form.

FACTS:

1. Correct to the extent that the appellant is working as Assistant Accountant BPS-17, presently posted in the office of District Comptroller of Accounts, Swat.

2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Incorrect. Respondent No.2 is the parent department of the appellant and has conveyed only NOC for extension to the borrowing department of the appellant.
6. Correct to the extent that Respondent No.2 has shown No Objection upon extension period in the said deputation but Respondent No.3, a borrowing department, had not required his services anymore and directed the Appellant to report for duty to his parent department. (Annexure-I), It is also added here that parent department of the Appellant i.e. Respondent No.4 has also issued his posting order upon his repatriation dated 26.04.2019 at District Comptroller of Accounts, Swat (Annexure-II) but instead of joining his parent department, the Appellant neither performed duty at borrowing institution nor at parent department.
7. Incorrect. As per Para-6 above, proper order of his posting was made but the appellant had not joined his parent department nor performed duties.
8. Correct to the extent that the honorable court has issued Status Quo in the matter but the Appellant is concealing here the facts that in the judgement of the honorable Court announced on 19.03.2019, it is clearly mentioned that **"the petitioner while obtaining the interim order on 07.08.2018 & 17.10.2018 has concealed material facts from this court regarding relieving order issued by the respondent (BISE Swat), therefore, both the connected C.O.C petitions, bearing Nos 104 & 126-M of 2018 are hereby dismissed"**. (Annexure-III)
9. Correct. The honorable court has dismissed his writ petition with the remarks at Para-7 of the judgement as per Annexure-III **"Thus, this petition having no merit is accordingly dismissed. However, it is for his parent department to decide the issue of his salary."**
10. Pertains to record, however, his posting order had already been made as stated in Para-6 above.
11. As per Para-8 & 9 above.
12. Pertains to record.
13. Pertains to record.
14. Pertains to record.
15. Pertains to record.
16. Correct. As the Appellant has neither performed his duties at borrowing department nor at parent department, hence, Respondent No.2 treated the period as Extra Ordinary Leave, as decided in a writ petition by the honorable Peshawar High Court, Peshawar bearing No.1180/2012 dated 19.06.2013.(Annexure-IV)
17. The appellant has got no cause of action to file the instant appeal, being devoid of merit.

Grounds:

- i. Incorrect. The Appellant, instead of performing his duties, enjoyed French Leaves and dragged the matter to litigation, instead of the facts that his services were no more required to the borrowing department.
- ii. Correct as the issue of settling his salary was left to the decision of parent department which has been decided as per rules.
- iii. As per Para-7, 8, 9 & 10 of the Facts above.
- iv. No comments.
- v. Incorrect. No any duty has been performed by the appellant either at borrowing department or parent department.
- vi. As per Para-A above.
- vii. No comments.
- viii. No comments.
- ix. Incorrect. The appellant has been treated at par and as per rules/policy.
- x. The respondents seek leave to raise additional grounds at time of arguments.

It is, therefore, respectfully prayed for that the appeal, being devoid of merit and legal force, may kindly be dismissed with cost.


District Comptroller of Accounts,
Swat.
(RESPONDENT NO. 5)


Director Treasuries and Accounts
Khyber Pakhtunkhwa
(RESPONDENT NO. 4)


~~SECRETARY FINANCE~~
Govt of Khyber Pakhtunkhwa
(RESPONDENT NO. 2)

C-I

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

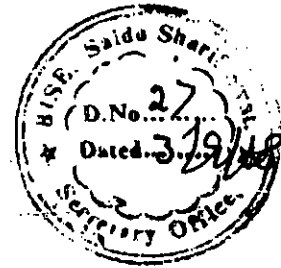


Block "A" Civil Secretariat Peshawar.

No.SO(B&T)E&SE/7-13/2018/BISE Swat
Dated Peshawar, the 09-08-2018.

To

✓ Mr. Muhammad Jamil,
Audit Officer,
Board of Intermediate & Secondary Education,
Swat.



Subject:- NOTIFICATION.

I am directed to enclose herewith a copy of Notification No. 568-576/
Estt./BISEE Swat dated 26-06-2018 on the subject cited above received from Secretary,
BISE Swat for information.

You are, therefore directed to report your parent Department for further
posting.

(AASMA ARIF)
SECTION OFFICER (B&Trg)

Encl: (As above)

Endst: of even No. date.

Copy is forwarded for information to:-

1. Chairman, BISE Swat.
2. P.S to Secretary E&SE Department.

SECTION OFFICER (B&Trg)

C.T.C

Supdt: Estt: for record
in concerned file

3/9/18

C-9



33 / dt ADM/ M 30/4/19

Directorate of Treasuries & Accounts
Khyber Pakhtunkhwa

Treasury Block, District Courts Compound, Behind Jamia Masjid, Khyber Road, Peshawar,
Phone & Fax: 091-9211856

Dated Peshawar the 26-04-2019

OFFICE ORDER

No: 1-4/DT&A/19/P. T/AA / 1033

In pursuance of Government of Khyber Pakhtunkhwa Finance Department letter No. SO (ESTT-I)FD / 1-26 / 2019 / Jamil, dated 12.04.2019, Mr. Muhammad Jamil Assistant Accountant (BS-16), on his repatriation from deputation to BISE, Swat Finance Department, is hereby posted as Assistant Accountant (BPS-16) in the office of District Comptroller of Accounts, Swat, against the vacant post in the public interest with effect from 22-03-2019.

Director
Treasuries & Accounts
Khyber Pakhtunkhwa

Endst No & date even

Copy for information is forwarded to the:-

1. District Comptroller of Accounts, Swat.
2. Section Officer (Estt-I) Govt: of Khyber Pakhtunkhwa Finance Department, Peshawar w/r to his letter referred above.
3. P.A to Director Treasuries & Accounts Khyber Pakhtunkhwa, Peshawar.
- ✓ 4. Officer concerned.
5. Office order file.

Deputy Director
Treasuries & Accounts
Khyber Pakhtunkhwa

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

**W.P No. 782-M/2018
With Interim Relief (N),
C.M 1136/2018 (N) & C.M 1301/2018**

Muhammad Jamil.....(Petitioner)

vs

**Government of Khyber Pakhtunkhwa through
Secretary (E&SE) & others.....(Respondents)**

Present: Mr. Aurangzeb, Advocate for the petitioner.

**Mr. Wilayat Ali Khan, A.A.G for the
respondents No. 1 & 2.**

**M/S Barrister Dr. Adnan Khan and Abdul
Ghaffar, Advocates for the respondent No. 3.**

Date of hearing: 18.03.2019

JUDGMENT

**SYED ARSHAD ALI, J.- Muhammad Jamil who is
a civil servant and the permanent employee of
Accountant General Department Khyber
Pakhtunkhwa, Peshawar has sought the indulgence
of this Court with the following prayer:-**

***"It is therefore, humbly prayed that
on acceptance of this writ petition,
a writ may be issued to respondent
No. 3 to release the salary and
other emoluments of the petitioner
and the petitioner be allowed to
continue his service as Audit
Officer BISE, Swat as allowed vide
letter dated 27.06.2018."***

Abdul Sabouh*

(D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

2. It is averred in the petition by the petitioner that through Notification dated 24.06.2015, he was posted as Audit Officer in the Board of Intermediate & Secondary Education, Saidu Sharif, Swat ('The Board') on deputation for a period of three years. However, on 30.05.2018 the Chairman of the Board wrote a letter to the Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar informing him about the completion of deputation period of the present petitioner. On the said application, the Elementary & Secondary Education Department solicited the opinion of the Secretary to Government of Khyber Pakhtunkhwa, Finance Department through letter dated 13.06.2018. In response to the said letter, the Secretary Finance, KPK through letter dated 27.06.2018 had conveyed his no objection for extension of the term of deputation of the present petitioner for two years. It is further averred in the petition that despite extension of the deputation period, the respondent No. 3 is reluctant to release his pay and other emoluments. Thus, he being

[Handwritten signature]

aggrieved of the said act of the department has approached this Court through the instant petition which came up for hearing on 07.08.2018. On the said date, notice of this petition was issued to the respondents and it was directed that status quo be maintained. On 17.10.2018, once again it was ordered by this Court that notice of C.M bearing No. 1136-M of 2018 be issued to the respondents and in the meanwhile, the respondents shall pay the monthly salaries to the petitioner.

3. The respondent No. 3 was put to notice, who appeared and filed his para-wise comments, wherein he has stated that through Notification dated 26.06.2018, the present petitioner was relieved from his duties w.e.f. 24.06.2018. He has also complained about the performance of the present petitioner. In this regard, he has placed on file certain explanations sought from the present petitioner regarding the payment of certain amount in violation of rules.

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4. Arguments heard and record of the case was perused with the valuable assistant of learned counsel for the parties.

Abdul Sabooch* (D.B.) Hon'ble Mr. Justice Muhammad Ghuzanfar Khan
Hon'ble Mr. Justice Syed Arahad Ali

5. It is evident from record that the present petitioner is the permanent employee of the Accountant General Department Khyber Pakhtunkhwa, Peshawar who was posted as Audit Officer in the Board on deputation for three (3) years vide Notification dated 24.06.2015. The record also suggests that the respondent No. 3/ barrowing department was not happy with his performance and in this regard, he has also placed on file explanation letters which were sought from the present petitioner. When his deputation period was about to complete, the respondent No. 3 i.e. the Chairman BISE, Swat had informed the Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar regarding the same through letter dated 30.05.2018. The said application was forwarded by the E&SE Department to the Secretary to Government of Khyber Pakhtunkhwa, Finance Department through letter dated 13.06.2018 for his comments. In reply thereof, the Finance Department through letter dated 27.06.2018 had conveyed no objection on extension of the deputation period of the present

petitioner. However, the borrowing department through Notification dated 26.06.2018 had relieved the present petitioner from his duties w.e.f. 24.06.2018 and was directed to report to his parent department. The said letter was concealed from this Court when this case came up for hearing on 07.08.2018 and the petitioner obtained an ex-parte status quo from this Court.

6. Indeed it is settled law that a deputationist cannot remain on deputation for an indefinite period or even stipulated period in accordance with his own whims and wishes and both, borrowing and the lending department have the jurisdiction either to withdraw the said deputation or terminate the same. Reliance is placed on *2010 SCMR 378* titled "Dr. Shafi-ur-Rahman Afridi vs C.D.A. Islamabad through Chairman", *2013 PLC (C.S.) 915* titled "Mst. Robia Ayub vs Federation of Pakistan through Secretary Ministry of Education & others" and *2018 PLC (C.S.) 1248* titled "Muhammad Azcem Khan Afridi vs Registrar of the Peshawar High Court & 4 others".

Abdul Sabouh*


(D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

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7. Since, after completion of the deputation period of the present petitioner, he was relieved from his service by the borrowing department through Notification dated 26.06.2018, therefore, he has no right to ask for further extension of the deputation period despite the fact that the Finance Department has granted him no objection certificate in this regard. Thus, this petition having no merit is accordingly dismissed. However, it is for his parent department to decide the issue of his salary.

8. Furthermore, the petitioner while obtaining the interim orders on 07.08.2018 & 17.10.2018 had concealed material facts from this Court regarding relieving order issued by the respondent (BISE Swat), therefore both the connected C.O.C petitions bearing Nos. 104 & 126-M of 2018 are hereby dismissed.

Announced
Dt: 19.03.2019


JUDGE


JUDGE

Office
21/03/2019



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Finance Department Civil Secretariat Peshawar <http://www.finance.gkp.pk> [facebook.com/GoKPPD](https://www.facebook.com/GoKPPD) twitter.com/GoKPPD

Dated Pesh: the 25-10-2022

Notification

NO.SO (Estt-D) FD/1-4/2022. In light of Judgment of Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat in Writ Petition No. 782-M/ 2018 with Interim Relief (N), CM 1136/2018 (N) & C.M 1301/2018, the case of **Mr. Muhammad Jamil, Assistant Accountant (BS-17)**, employee of Directorate of Treasuries & Accounts, Establishment regarding non-drawl of salaries has been processed and examined in Regulation Wing of this department.

2. **Whereas** the Peshawar High Court, Peshawar in writ petition No. 1180/2012 dated 19.06.2013 has passed orders that it's a principle "no work no pay". Since, in the instant case neither the officer has performed duties at the borrowing organization nor at lending department.

3. Consequent upon above, the period w.e.f 24.06.2018 to 22.03.2019 is hereby treated/ considered as Extra Ordinary Leave (Leave Without pay) under Rule-12 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 in the best public interest.

**SECRETARY TO GOVERNMENT
KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Endst: No: & Date even

Copy forwarded for information to the:

1. Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
2. District Comptroller of Accounts, Swat.
3. PS to Secretary Finance Department.
4. PS to Special Secretary (A&R), Finance Department.
5. P.A to Additional Secretary (Admn.), Finance Department.
6. Officer concerned.
7. Office order file.

[Signature]
SECTION OFFICER (E-I)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
SERVICE APPEAL NO. 540/2023

Muhammad Jamil Son of Buzarg Muhammad Resident of Amankot, Tehsil Babuzai District Swat.

..... (APPELLANT)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education at Block-A Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa at Civil Secretariat at Peshawar.
3. Chairman Board of Intermediate & Secondary Education Saidu Sharif Swat at Kokrai, Saidu Sharif Swat.
4. Director Treasuries & Accounts, Khyber Pakhtunkhwa at Peshawar.
5. District Comptroller of Accounts Swat at Saidu Sharif Swat.

..... (RESPONDENTS)

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 2, 4 & 5

AFFIDAVIT

I, Mr. Rooh Ullah, District Comptroller of Accounts, Swat (BPS-19), do hereby solemnly affirm and declare that the contents of para wise comments / reply in light of order/directions of the Honorable Service Tribunal Khyber Pakhtunkhwa Camp Court Swat on behalf of the respondent No. 2,4 & 5 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court.

Deponent



Rooh Ullah,
District Comptroller of Accounts, Swat
CNIC No.

Identified By:





(14)

Directorate of Treasuries &Accounts
Khyber Pakhtunkhwa

Treasury Block, District Courts Compound, Behind Jamia Masjid, Khyber Road, Peshawar,
Phone & Fax: 091-9211856

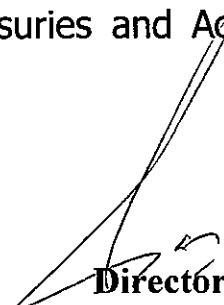
No: 1-68/DT&A/23/W.P/

Dated Peshawar the 30.03.2023

AUTHORITY LETTER

Mr. Rooh Ullah District Comptroller of Accounts, Swat is hereby nominated and authorized to attend the Honorable Khyber Pakhtunkhwa Service Tribunal at Camp Court Swat in Service appeal No.540/2023 titled Muhammad Jamil Verses Government of Khyber Pakhtunkhwa and others on behalf of the Respondent No.4 i.e. Director Treasuries & Accounts, Khyber Pakhtunkhwa, Peshawar.

He is also authorized to submit all sort of documents, statements and replies etc. in the said court, on behalf of Director Treasuries and Accounts, Khyber Pakhtunkhwa.


Director
Treasuries & Accounts
Khyber Pakhtunkhwa

Director
Treasuries & Accounts
Khyber Pakhtunkhwa
Peshawar