

K-478
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247
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SHOW CAUSE NOTICE

I, **Mohammad Shehzad Arbab**, Chief Secretary, Khyber, Pakhtunkhwa, as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, **Mr. Adil Yasin**, Lecturer in English (BS-17), Govt. Post Graduate College, Kohat as follows:

ii. That consequent upon the completion of inquiry conducted against you by the Inquiry Officer/ inquiry committee for which you were given opportunity of hearing vide office communication No.SO.(Colleges-II)HED/12-9/2012/1668-70 dated 26.08.2013.

ii. On going through the findings and recommendations of the Inquiry committee, the material on record and other connected papers including your defence before the inquiry officer/inquiry committee.

2. I am satisfied that you have committed the following acts/omissions specified in Rule-3 of the said rules.


- (a) Mis-conduct,
- (b) In-Efficiency.

3. As a result thereof, I, as Competent Authority, have tentatively, decided to impose upon you the penalty of dismissal from service under Rule-4 of the said Rules.

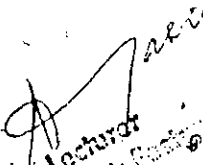
4. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

6. A copy of the findings of the inquiry officer/inquiry committee is enclosed.


MOHAMMAD SHEHZAD ARBAB,
CHIEF SECRETARY,
KHYBER PAKHTUNKWHA

Mr. Adil Yasin,
Lecturer in English (BS-17),
Govt. Post Graduate College, Kohat


Lecturer
Govt. Post Graduate College
Kohat

Govt. Post Graduate College
Kohat
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To

The Secretary Higher Education,
The Government of Khyber Pakhtunkhwa.

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Through Proper Channel:

The Director,
Higher Education, Khyber Pakhtunkhwa.

ANSWER

Subject: Reply to The Show Cause Notice. ✓

Sir, it is respectfully submitted that the charges of Misconduct and Inefficiency shown in the show cause notice need to be, very kindly, reconsidered, if examined in the totality of the case. Fundamentally it was a case of request for regularization of a certain period spent beyond deputation.

Respected Sir, the full facts of the case are that I was allowed to join KSA as an English teacher on a one year deputation period vide notification NO-S.O (FATA)/Edu: /1-9-2002 dated 8-8-2002. This one year period was extended from time to time on yearly basis till 2007.

On the expiry of deputation period I applied for further extension in deputation in relaxation of the Government Rules on the subject. I remained in constant contact with the department and the response was that the case was being processed positively. There was not even a hint of any rejection of the application. However in March/2009, a notice for resumption of duty was published in newspaper. I requested for extension till July 2009, which was graciously accepted. I complied and reported my arrival for duty. I was posted at GDC-Lachi (Kohat) wef 21-7-2009 vide NO S.O(C)X-4/08 dated 03-08-2009.

I remained at the college roll up to 30-09-2009. It important to mention that on resumption of duty I was assured that the period will be regularized in the due course of time. Keeping in view the contractual obligations in KSA and the balance of leave at my credit, I applied for the grant of EOL/LWP in accordance with the provisions of the Revised Leave Rules 1981. I was told that the application would be processed and the sanction conveyed soon.

Honourable Sir, it is most important to mention that prior to this application, all the sanction notifications had been issued in my absence after having taken their due time. This gave me a misleading impression that the EOL/LWP request would be issued like the past extensions. But it was not to be the case. At the same time I never received any rejection notice or call whatsoever. Through my contacts I was told that it was being processed according to the dictates of my request and Leave Rules 1981. The above said application was followed by

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another application requesting for EOL till May 2011. All these applications are present in my file and can be perused. Had these applications been decided positively or negatively, I would have obeyed the directives of the department.

Sir, the absence from duty beyond sanctioned period, was never intentional or deliberate. I applied for extension in deputation and the grant of EOL. I awaited action on these requests but these were kept undecided by the authorities. In May 2011, I joined the duty on my own and have been serving at GPGC-Kohat to the utmost satisfaction my high ups for almost three years. During all these years I showed full commitment and dedication in performing my duties.

Pray

It is humbly prayed that the case of indiscipline may please be converted to a case of grant of EOL retrospectively in terms of Para 12(3) of Revised leave Rules 1981. If there had been any deliberate act of misconduct, I would never have dared come back and serve here. I apologize for spending period not covered by prior sanction and pray for lenient view of the omission which will never be repeated in future.

After having served in this department for almost 16 years I need a sympathetic reconsideration. My children are studying in different stages of their crucial school life. If I am dismissed from service, their futures will be destroyed. A kind stroke of your pen can save my career and my children's future.

I humbly request you that necessary orders for regularization of the periods from (01-02-2008 to 20-07-2009) and from (01-10-2009 to 11-05-2011) may please be issued in the greater interest of my students and particularly my children whose only source of survival is my present job. Photocopy of the identical case of ms Nargis Shinwari whose period of leave without prior sanction was regularized by the department with the concurrence of Finance department. It is again requested that my case be please decided on the analogy of the said case.

YES SIR, I want to be personally heard.

Adeel Yasin

Lecturer in English

GPGC Kohat

~~Attested to be~~



24. *By Registered Post*
**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

Dated Peshawar the 25.02.2015.

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NOTIFICATION

No. SO (COLLEGES-II)HED/12-9/2014. WHEREAS Mr. Adil Yasin, lecturer in English (BS-17), Govt. Post Graduate College, Kohat was proceeded against under the Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011 for the charges mentioned in the Statement of Allegation served on the accused officer vide Govt. of Khyber Pakhtunkhwa, Higher Education Department letter No. SO (COLLEGES-II)HED/12-9/2012 dated 26.08.2013.

ANNEX 3

2. **AND WHEREAS** an inquiry officer Mr. Fazli Rabbi, PCS (EG) BPS-20, Provincial Census Commissioner / Head of Pakistan Bureau of Statistics Khyber Pakhtunkhwa / FATA appointed with the task to conduct a fact finding inquiry against the accused officer, for the charges leveled against him in accordance with the rules.

3. **AND WHEREAS** the Inquiry Officer after having examined the charges, evidence on record and explanation of the accused officer, submitted his enquiry report.

4. **AND WHEREAS** the Competent Authority (Chief Secretary, Khyber Pakhtunkhwa) after having considered the charges, findings and recommendations of Inquiry Officer has imposed the penalty of removal from service.

5. **NOW THEREFORE**, The Competent Authority, in exercise of powers conferred upon him under Rule-3 of the Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011, is pleased to impose upon the said officer the penalty of removal from service with immediate effect.

SECRETARY TO GOVT. OF
KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT

Endst: No. & Date Even.

Copy for information forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. Principal Government Post Graduate College, Kohat.
4. District Accounts Officer, Kohat.
5. Officer concerned.

Rukhsana Jabeen
(RUKHSANA JABEEN)
SECTION OFFICER (COLLEGES-II)

Attested to be
True Copy

Doc No. 463 dated ¹⁶ March, 2015

To

The Chief Minister,
KPK, Peshawar.
(Appellate Authority)

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ANNEX I

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 25.02.2015 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE.

FACTS:

1. That the appellant joined the Higher education Deptt: as Lecturer in English after proper recommendations of the then Public Service Commission in the year 1998. The appellant's service record remained good and there were no complaints against him regarding his performance.
2. That the appellant remained posted at various stations and performed his duty upto his level best and honesty.
3. That the appellant was preceded abroad to Saudi Arabia on deputation basis w.e.f 08.08.2002. which was extended from time to time through proper application submitted by the appellant for extension.
4. That the charge sheet was issued to the appellant in which the appellant was charged for the allegations:
 - i. *That while working at Govt: Post Graduate college, Parachinar, Kurram Agency, that you proceeded abroad to Saudi Arabia on deputation basis w.e.f 08.08.2002 you were granted extension from*

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- time to time up to 08.08.2007. You did not request for extension 08.08.2007 nor was extension granted to you after 08.08.2007.
- ii. That you were repatriated to your parent Department on 21.07.2009, while you claimed that your deputation will expire in April 2009, by concealing the facts from the Department.
 - iii. That you were not granted extension after 08.08.2007.
 - iv. That you remained without approval of deputation w.e.f 09.08.2007 to 20.07.2009.
 - v. That you reported for duty on 21.07.2009 and were adjusted at GDC Lachi, Kohat.
 - vi. That you applied for extra ordinary leave (without pay) for 180 days w.e.f 01.10.2009 which was not considered and you left the college and gone to Saudi Arabia without approval of your leave.
 - vii. The Director Higher education, Khyber pakhtunkhwa sent a registered letter No.5192 dated 25.01.2010 on your home address wherein you were directed to report for duty immediately failing which disciplinary action will be initiated against you.
 - viii. Instead of resuming your duty, you applied for extra ordinary leave (without pay) for a greater period of one year w.e.f 01.10.2009 to 30.09.2010 and did not resume without any decision of the competent authority.
 - ix. That you remained absent from duty w.e.f 01.10.2009 to 11.05.2011.

The appellant was asked to submit written reply to the charge sheet which was duly replied by the appellant in which he denied all the allegations para wise as under:

- i. As far as para i is concerned, the appellant submitted that he requested for further extension after 2007 on which the office said that it would be proceeds accordingly and he also followed it up via telephonic contact and the department always reiterated that it was under process. On the news paper notice for joining the duty, the

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- appellant requested the authorities to allow the time till July 2009 which was graciously allowed by the department
- ii. As far as para ii is concerned, he did not conceal any facts as on his request the department grant time till July 2009.
 - iii. As far as the para iii is concerned, the appellant requested for extension up to 2009 which was allowed by the department.
 - iv. As far as para iv is concerned, the appellant submitted application for further extension and hoped it was allowed as previous years but unfortunately it was not to be and when it was advertised in the paper he requested the concerned authorities and his name was withdrawn from that list. He immediately came back and reported to office and posted at GDC Lachi which he joined accordingly.
 - v. As far as para v is concerned, the appellant reported to the department on 21.07.2009 and posted at GDC Lachi which he joined there w.e.f 21.07.2009.
 - vi. As far as para vi is concerned the appellant applied for one year extra ordinary leave (without pay) instead of 180 days, but the concerned authorities never contacted regarding non approval of the request for leave.
 - vii. As para vii is concerned the appellant submitted that the letter was not received by any member of his family (there is no token/receipt with the department) and he came to know about this letter through the charge sheet.
 - viii. As far as para viii is concerned he submitted that he did not resume his duties as he was not relieved by Saudi authorities as contract made with Saudi authorities bound him to complete the academic year and due to his wife's back surgery problem.
 - ix. As far as para ix is concerned the appellant submitted that he requested for that time span but unfortunately the concerned letter of disapproval of request had been misplaced by the directorate and the whole fault was thrust upon the appellant.

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5. That then one sided inquiry was conducted in a prejudiced manner without asorting real factual position and the appellant was held responsible by the inquiry officer.
6. That show cause notice was issued to the appellant which was replied by the appellant and again categorically denied all the allegations but in vain.
7. That the appellant was removed from the service vide order dated 25.02.2015. Hence the impugned order is liable to be set aside on the following grounds.

GROUNDS:

- A. That the impugned order dated 25.02.2015 is against the law and rules, and norms of justice. Therefore liable to be set aside.
- B. That the appellant clearly mentioned in his reply to the charge sheet that he requested for further extension after 2007 (both the applications can be perused) on which the office said that it would be processed accordingly and he also follow up for that and the department always reiterated that it was under process. Therefore the appellant should not be penalized for the fault of others.
- C. That the appellant did resume his duty in time and then properly adjusted by the competent authority with retrospective effect. i.e from the date of appellant's actual arrival. Thus there remains no concealment on the appellant's part.
- D. That after resuming duty the appellant performed duty for long two/three months and he applied for EOL only after getting confirmed from department that he could do so.

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- E. That after following up his request for three months, the appellant had to join his duty in Saudia and kept regular telephonic contact with the authorities who never said a word about rejection of the application.
- F. The charge sheet says a Registered letter no.5192 was sent by the Director Higher Education directing the appellant to resume the duties immediately. The appellant never received the letter nor does the department have any Token/Receipt of the letter bearing the signature of the receiver in the appellant's family. The inquiry officer, in his continued arrogant and biased manner, overlooked that Grave fault of the department and didn't listen to the appellant.
- G. That even when the charge sheet had been decided against the appellant, the department gave wrong reports that his case was under process and might end favorably.
- H. That it was only through the appellant's family member's visit to the secretariat that the charge sheet issue was known.
- I. That appellant ~~arrived~~ and requested for an Inquiry rather than posting/adjustment but he was adjusted at GPGC Kohat and directed to teach with immediate effect.
- J. That appellant had been performing his duties to fullest satisfaction of his authorities till the date of his removal from service (4 years)
- K. That even the statements and recommendations of the inquiry officer would reveal that he acted with partiality, arrogance and crossed the limits of charge sheet, especially while recording his recommendations. The use of unparliamentary language regarding the appellant clearly suggests the unjust and prejudiced attitude of the inquiry officer. The appellant accepted his part of the Fault but inquiry officer remained deaf to it. Rather he went upto character assassination

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of the appellant in his attempt to extract information from different Principals under whom the appellant had worked.

- L. That the Personal Hearing was not conducted according to the prevailing rules and norms of Justice. The appellant was not allowed to complete a single sentence to defend himself nor was an apology of the appellant considered. Rather, he was humiliated and highly insulted and asked to leave the office with order of Removal from service.
- M. That the department made the appellant work for FOUR years after repatriation in which he served honestly. Removal from service, FOUR years after his Repatriation, has made him Over Age for any service in the country and abroad as well. The whole Family structure of the appellant has been put at Stake with this decision.
- N. That the punishment is very harsh and did not commensurate with the fault of the appellant.
- O. That the appellant has enough long service career (almost 17 years) and no complaint has been filed against him. Removal from service would mean the ruin of the career and the future of the appellant's children whose only source of living is this job.

It is, therefore most humbly prayed that the order dated. 25.02.2015 (copy attached) may be set-aside and the appellant may be reinstated with all back and consequential benefits.

Adeel Yasin

Ex- lecturer in English

Govt. Postgraduate College

Kohat.

Copy to : Secretary Higher Education, govt. of KPK.

Attested to be

To,

The Director,
Higher Education,
Khyber Pakhtunkhwa, Peshawar.

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ANNEX U

Subject:- **REQUEST FOR ADJUSTMENT OF PENDING PERIOD**
(16/10/2006 TO 20/07/2009).

Dear Sir,

With respect it is stated that I, Adeel Yaseen, Lect: in English was allowed to go on deputation abroad to KSA vide notification No. SO(FATA)/Edu:/1-9/2002 dated 08/08/2002. I consumed the period till 15/10/2006.

For further extension I applied many times but was not responded positively. I remained in KSA due to essential commitments / assignments during the period from (16/10/2006 TO 20/07/2009). I reported for duty on 21/07/2009 and was posted at GDC Lachi, Kohat.

Eversince then the above said period has been pending and a stumbling block in my promotion. Kindly declare the said period as leave without pay so that I may be able to enroll my self for promotion.

All relevant documents regarding deputation / extensions are attached herewith please:

Thanks

Yours faithfully,

A Yaseen

(Adeel Yaseen)
Lect: in English
GPGC Kohat.

Dated. 01/11/2012

Attached to be
True Copy

U

STATE BANK OF PAKISTAN

112

PROVINCIAL

dated the 07th day of August 2004

Received from the bearer Adeel Yousaf in Eng. G.C. PCR

the sum of Rs. 86,880/-

to be credited to Government account under the head 12124 (22241)

on account of Pension Contribution

STATE BANK OF PAKISTAN
 SBP (Bank) Peshawar
RECEIVED IN CASH
 This portion to be returned to the payee received by the Agent
 31 AUG 2004

Signature
Manager



Note: The Bank Agent is instructed not to receive money unless both portion the invoice are carefully and clearly filled in.

VERIFIED
 RECEIVED
 Assistant Treasurer (Incharge)
 Peshawar
 Copy

NWFP A&T 200

NG MIS ORIGINAL

GS&PD.NWFP.857—F.S.—2,000 Pads of 09 8.3.2004(31)/H.D.

GLOBUS No. 2471 113

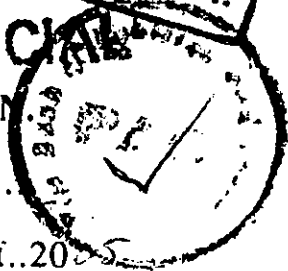
(This portion to be transmitted by the Bank Agent to the Treasury Officer in support of the credit in his daily account)

To

THE MANAGER, STATE BANK OF PAKISTAN
PROVINCIAL

Head of Accounts
Resident Treasurer
Peshawar
43440/-
PAID IN CASH
dated the 7th of July 2005

Signature of A. Ghani



Received from the bearer the sum of Rs. = 43,440/-

to be credited to Government account under the head 1212401 (002241)
on account of pension contribution

Signature and full official designation of the officer ordering the money to be paid in.

Attached to be True copy

ORIGINAL

AISC PROVINCIAL

114
1783

GS&PD.NWFP.857—F.S.—2,000 Pads of 100L—8.3.2004(31)/HD-1

(This portion to be transmitted by the Bank Agent to the Head of AIG Verified Treasury Officer in support of the credit in his daily account)

To

THE MANAGER, STATE BANK OF PAKISTAN

697
Assistant Treasury Officer
Peshawar

Rs 49944 / Forty nine thousand four hundred and forty four only

STATE BANK OF PAKISTAN
HEAD OFFICE (S.W.) PESHAWAR
RECEIVED IN CASH
31/10/2009

dated the..... of..... 20

Received from the bearer the sum of Rs. 49944/

to be credited to Government account under the head 1212401(C.0224)
on account of Mission contribution

Signature and full official designation of the officer ordering the money to be paid in.

A. J. Amin

PROVINCIAL

GS&PD.NWFP.857-2000 Pads of 1000-8.312004(91)/HD-1

2273
115

R. 49955/-

(This portion to be transmitted by the Bank Agent to the Treasury Officer in support of the credit in his daily account)

TO THE MANAGER, STATE BANK OF PAKISTAN, Peshawar

SEP 88C (Bank) Peshawar.

RECEIVED IN CASH

- 6 AUG 2007

4FO

Received from the bearer the sum of Rs. 49955/-

Muhammad Yaseen

Adel Yaseen

dated the..... of..... 20

to be credited to Government account under the head 721241 SC 02241

of..... Pension Contribution.....

Attached to be True copy

Adel Yaseen s/o muhd Yasin
Signature and full official designation of the officer ordering the money to be paid in.

Wazir Ahmad Peshawar

WAKALAT NAMA

IN THE COURT OF

K.P.L. Bench Tribunal

Aded Gaseem

Appellant(s)/Petitioner(s)

VERSUS

Gout

Respondent(s)

I/We _____ do hereby appoint
Mr. Khaled Rehman, Advocate, Supreme Court of Pakistan in the above
mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Khaled Rehman
KHALED REHMAN,
Advocate,
Supreme Court of Pakistan

Asir
Signature of Executants

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 756/2015

**Adil Yasin, Ex-lecturer in English GPGC Kohat Resident of
Garhi Behram Khan Tehsil and District Kohat.....Appellant
VERSUS**

**Govt. of Khyber Pakhtunkhwa through Chief Secretary
And Others..... Respondents**

Respectfully Sheweth:

Preliminary Objections:

1. That the appellant has no case of action or locus standi to file the instant service appeal and is also estopped by his conduct to file the instant service appeal in this Hon'ble Tribunal.
2. The appellant has not come to this Hon'ble Tribunal with clean hands. He has concealed material facts from this Hon'ble Tribunal.
3. That the appeal in hand is bad for non-joinder of necessary parties like the Secretary Finance Khyber Pakhtunkhwa and Director Higher Education Khyber Pakhtunkhwa.

On Facts:

Para wise comments are submitted as under:

1. Pertains to the personal record of the appellant, hence no comments.
2. Correct.
3. Correct to the extent that the appellant was allowed to proceed on deputation for a period of one year, as per notification dated: 08-08-2002 correctly (Annexed-B) by the appellant with the memo of his appeal.
4. Correct that on completion of one year deputation period, vide notification dated: 06-12-2003, one year further deputation period was extended to him.
5. Correct that the appellant was granted extension in the deputation period from time to time. And after 08-08-2007 he was granted no extension in deputation period, neither he took the pains to request for further extension.
6. It is stated that after expiry of deputation period on 08-08-2007, the appellant was careless and he did not bother to request for further extension or wait for the sanction by the competent authority of his request for extension in his deputation period and thus he remained absent from his duties with effect from the date 08-08-2007. Therefore, the respondent has to serve the appellant with the Notice dated 02.03.2009 correctly annexed as E by the appellant to report for duty within 30 days. It is immaterial whether the appellant applied for extension of his deputation or not. It is an admitted fact that the respondent did not extend his period of deputation wef 08.08.2007. The respondent did not advise him to submit applications for extension of his deputation or leave or any assurance to that effect was made to him, and thus, the period of absence of the appellant remained continuous. The appellant went back to Saudia Arabia without the sanction of the respondent government thus showing his utter lack of interest in the public service.
7. Correct that the appellant was given an opportunity to rejoin his service vides the letter dated: 02.04.2009 annexed as F by the appellant and he was posted at Govt. Degree


College Lachi Kohat vide Notification dated 03.08.2009. However, he was not thereby absolved from the liability of his willful absence wef 08.08.2007.

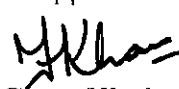
8. The applications for leave of 180 days and then again for another one year as claimed by the appellants without acceptance by the competent authority is of no avail to the appellant. Acceptance of application of the appellant is not obligatory on the respondent government. Leave is not the vested right and cannot be claimed as a matter of right. Government is not subordinate to the appellant; rather he is required to apply and wait for its sanction by the competent authority before proceeding for foreign journey.
9. The appellant went to Saudi Arabia without the prior sanction of either leave or extension of deputation period already expired on 08.08.2007. The mere submission of application for leave does not tantamount to its acceptance by the respondent government, so the plea of the appellant is not justified that he was the victim of circumstances and that is why, he was unable to join and attend to his official duties until 12.05.2011, when he was reposted in Govt. Post Graduate College Kohat. By that time, departmental action had been initiated against him though at belated stage, however, delayed action on the part of respondent government does not entail his outright exoneration from liability of his willful absence.
10. As stated in the preceding paras on facts, the appellant continuously remained absent from duties and therefore, the respondent Authority charge sheeted him on the charges inter-alia, of willful absence. An enquiry was conducted against him. He was given an opportunity to defend his position and his reply to the charges was not convincing. The inquiry officer found him guilty for the charges levelled against him and after fulfillment of all codal formalities; the appellant was removed from service.
11. The appellant remained continuously absent from his official duties, the competent authority, has therefore, initiated disciplinary action against him vide charge sheet and statement of allegations correctly annexed as **N** by the appellant. The reply of the appellant as annexed (**O**) was not convincing and the inquiry officer after thoughtful consideration and taking all the necessary evidences vide his inquiry report "**P**" annexed by the appellant, found him guilty of all the charges levelled against the appellant. Therefore Show Cause Notice dated 28.01.2011 was served upon the appellant accused to which with the latter replied. Show Cause notice and reply to the same has been correctly annexed by the appellant with the memo of his appeal as **Q and R** respectively and after fulfillment of all codal formalities, the appellant was removed from service vide the notification dated 25.02.2015, correctly annexed "**S**" by the appellant with the memo of his appeal. His departmental appeal was also found not convincing and therefore ignored.
12. Incorrect as explained in the preceding paras on facts.
13. As stated in the preceding paras, the reply to the Show Cause notice was not convincing and was therefore rejected.
14. As stated in the preceding paras on facts, after fulfillment of all codal formalities, the major penalty of removal from service was imposed on the appellant vide notification dated 25.02.2015. His departmental appeal was also not convincing and did not

deserve a response at all. The instant service appeal is also likely to be dismissed by the Hon'ble Service Tribunal.

On Grounds:

- A. Incorrect and misconceived. The appellant was treated in accordance with law. He was rather leniently treated by the respondent government.
- B. Incorrect. The charges leveled against the appellant were proved and on the basis of inquiry report, material on record, the competent authority removed him from service. The appellant failed to make out a case much less good and therefore justifiably punished.
- C. Incorrect. The inquiry officer has conducted the inquiry in a regular manner. The appellant was provided all opportunities to defend himself. He had the opportunity to cross examine the witnesses who produced the evidence against him. He has till date nothing to explain convincingly, his willful absence from duties besides other charges. After the failure of the appellant to defend him vis-à-vis the charges leveled against him, the competent authority punished the appellant.
- D. Incorrect. Regular inquiry was conducted against the appellant and then after "due process of law", the appellant was removed from service.
- E. Incorrect and misconceived as stated in the preceding Para on facts and grounds.
- F. Incorrect and misconceived. The appellant has availed all the remedies available to him, to defend his position but failed badly.
- G. As stated in the preceding Paras, the appellant was careless in obtaining prior sanction for his leave. The respondent department is not under obligation to grant continuous sanctions for leaves. The appellant remained absent from duties and was punished there for after due process of law.
- H. Incorrect and misconceived. The appellant remained absent from duties. He failed to obtain prior sanction for his leave. The alleged delayed action on the part of respondent government cannot mitigate the gross misconduct of the appellant. The appellant is required to stand on his own legs instead of attempting to make out his case on the alleged flimsy weaknesses of the respondents. It is the appellant who is to be blamed for his own fate and not the respondents.
- I. As explained in the preceding paras, the appellant himself is to be blamed for his predicament. The respondents have simply performed their obligatory duties in lawful manner.
- J. Incorrect and misconceived. The appellant was dealt with in accordance with law. The attribution of malafide intentions to the respondents is baseless.
- K. Incorrect and misconceived. The continuous absence from duty and his carelessness to join his duties for years, the penalty of removal from service was imposed upon the appellant that is commensurate with the severity of his guilt. The appellant may adopt any other means of livelihood for himself to support his family and he is not likely to be reinstated. In view of the above submissions, the appeal of appellant may be dismissed in the public interest.

for 
Chief Secretary,
Govt. of Khyber Pakhtunkhwa
Respondent No. 1


Secretary to Govt. Khyber Pakhtunkhwa
Higher Education Department.
Respondent No.2

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS PESHAWAR.

Service Appeal No. 756/2015

Adil Yasin..... Appellant

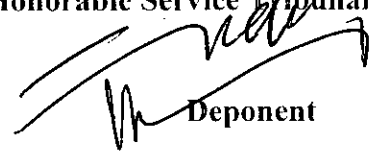
VERSUS

Govt. of Khyber Pakhtunkhwa through Chief Secretary

And Others..... Respondents

AFFIDAVIT

I, Jehangir Khan, Section Officer (Litigation) Higher Education Department, as per instructions of the respondents, do hereby solemnly affirm and declare on oath that the contents of the accompanying para-wise comments are true to best of my knowledge and belief and nothing has been concealed therein from this Honorable Service Tribunal.


Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 756 /2015

Adeel Yasin.....Appellant

Versus

The Govt. and others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. Appellant has got cause of action and for that matter locus standi to file the instant appeal. The estoppels does not run against the law and moreover appellant has come to the Tribunal with clean hands and nothing has been concealed. All necessary and proper parties are arrayed as Respondents.

Facts:

1. Being not replied hence admitted.
- 2-4. Being admitted need no elucidation.
5. Partially correct. After 08.08.2007 the appellant submitted applications for 2007 and 2008 by hand to the concerned staff i.e. Section Officer (FATA Colleges) namely Muhammad Anwar Khan, who processed the same. The said officer has now been posted in the Governor House and the fact may be

affirmed from him. It is also further added that during the process of inquiry proceedings against the appellant in the FATA Directorate, the Enquiry Officer was requested that Mr. Anwar Khan the concerned Officer was sitting the next room and be called to confirm the factum of applications and also to produce the same before the Enquiry Officer he did not bother to investigate such a serious lapse on the part of department. As mentioned earlier, the prior sanction was neither possible due to the short summer leave. All extension Notification dated 06.12.2003, 29.10.2004, 15.10.2005 and 31.01.2007 bear the proof that they were issued after process of 4/5 months.

6. Incorrect. Appellant did apply for extension of cessation of the deputation period on 08.08.2007, therefore, the allegation of absence is wrong. The answering Respondents have admitted in-between the lines the submission of the applications. The actions were prompted at the advise of the concerned staff. On previous occasions too the appellant would leave for Saudi Arabia and the extension Notification used to be provided subsequently.
7. Being admitted needs no comments.
8. Incorrect. The applications were submitted as a matter of routine as per the past practice and as per the advice of the dealing hands. First 180 days leave application was advised by the Department not by the appellant and subsequently the appellant was again advised to substitute the same for one year as according to them leave application for 180 days was not appropriate/feasible. It was the responsibility of the Enquiry Officer to have summoned the concerned Officer and enquire into the matter but he was extremely partial and did not administer justice.

9. Incorrect. The answering Respondents have not looked into the facts and circumstances of the case in a judicious manner. Moreover, the departmental action was initiated quite belatedly. A delay that too of 04 years in deciding the fate of the lifelong career of the appellant, is the height of injustice, particularly after the repeated requests of the appellant to expedite the matter so that he could re-join the previous service in the event of any adverse outcome. Due to the lethargic attitude, the appellant lost the prospects of rejoining his previous service on the one hand and rendered overage on the other, and now ineligible for any job in country and abroad. Working for such long time naturally develops legitimate expectancy that such harsh penalty would not follow.
10. Misconceived. The appellant returned to country in May 2011, submitted arrival report on 12.05.2011 and was adjusted on 08.08.2011 after lapse of about 03 months with the observation that the departmental action would follow.
11. Incorrect. The Respondents have only repeated the stances earlier raised. The enquiry proceedings were defective. The legal requirements were violated and the codal formalities were not fulfilled. The departmental appeal was also not properly heeded too in violation of Rule-5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986.
- 12&13. Being not replied hence admitted.
14. Incorrect. No codal formalities were complied with before imposing major penalty upon the appellant. The Respondents were bound to dispose of the departmental appeal of the appellant under the law. Ignoring the departmental appeal by

the authority is an act contrary to law and against the principles of good governance.

Grounds:

- A. Incorrect. The appellant was not treated according to law. The inquiry was not conducted fairly and impartially. No attempt was made to collect oral and documentary evidence in favour of the plea taken by the appellant. The charge sheet claims a warning registered letter regarding the disciplinary proceedings but the same never reached the appellant nor any of his family members. The delivered registered letters always bear the signature of the addressee or token of receipt but the person from the Department could not produce proof with regard to letter No.5912 dated 15.01.2010 receipt . The Enquiry Officer was requested to require the letter from the departmental representative sitting at the time but he rebuked appellant and went ahead.
- B. Incorrect. The charges of willful absence against the appellant were fabricated and not supported by the facts. The appellant was wrongfully burdened with the very harsh punishment which is unfair keeping in view the facts and circumstances particularly his desire to serve this country instead of the foreigners.
- C. Incorrect. It was a sham and fill-in-the-blank enquiry which cannot be a substitute for a regular enquiry.
- D. Incorrect. The due process of law was violated with impunity.
- E. Incorrect.
- F. Incorrect.

- G. Incorrect hence vehemently denied. The appellant has never been careless rather he preferred to serve at his country instead of abroad ignoring financial gains.
- H. Misconceived. The absence of the appellant was not willful, it was due to the defective practice, lethargic attitudes and omissions as well as non-actions of the departmental staff who failed to process the cases in due course of time. It is said that the "alleged delay from department in deciding the period" is a minor or flimsy weakness. How can one say the delay of four years is a minor fault of department? Waiting for four year made the appellant settle his life children's education, family set up and hopes here.
- I&J. Incorrect hence denied.
- K. Incorrect. The penalty imposed on the appellant was exceedingly harsh, disproportionate to the so called guilt of the appellant and therefore, liable to be reversed, it is easier to say the appellant can adopt any career to support his family. The extreme delaying tactics rendered the appellant over age for all jobs and setting up a business needs huge capital which the Government employees rarely possess.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant


Khaled Rahman
Advocate,
Supreme Court of Pakistan

Dated: 02/03/2016

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

A. J. ...
Appellant

Vakalatnama

Appeal No. 756/2015

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,

PESHAWAR

Adeel Yasin

Versus

The GOVT. of KPK

I/we Adeel Yasin

Hereby appoint, MUHAMMAD RAMZAN KHAN, ADVOCATE, in the above-mentioned case, to do all or any of the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above mentioned case in this honourable Tribunal/Court in which the same may be tried or heard, and any other proceedings arising out of or connected herewith.
2. To sign, verify and file appeals, petitions, suits, affidavits and applications for compromise or withdrawal or for referring to arbitration of the said case as may be deemed necessary or advisable by clients for the conduct, prosecution or defense of the said case at all its stages.
3. I/we undertake the appear in the above matter before the court, Tribunal and my/our counsel shall not be held responsible in case the matter is dismissed/disposed off ex-parte due to my/our failure to appear/attend the case.

AND hereby agree: -

That the advocate will be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fees remained unpaid. Further no paid fee will be returned.

In witness whereof I/we have signed this vakalatnama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us

Accepted by:

Signature of Executant

A Yasin

MUHAMMAD RAMZAN KHAN

Advocate, High Court, Federal Service Tribunal

M.A. L.L.B. (Hons.) Sharia & Law.

LL.M. (International Law).

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