

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	15.11.2016	<p style="text-align: center;">3</p> <p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u></p> <p style="text-align: center;">Appeal No. 1015/2015</p> <p style="text-align: center;">Mrs. Rushda Habib Versus Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Sectt. Peshawar etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Appellant with counsel and Mr. Muhammad Adeel Butt, Addl. Advocate General for the respondents present.</p> <p>2. Mrs. Rushda Habib, Ex-Lecturer of Zoology hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 4.6.2015 vide which she was removed from service on the allegations of absence from duty where-against her departmental appeal dated 09.06.2015 was not responded and hence the instant service appeal on 14.09.2015.</p> <p>3. Brief facts of the case of the appellant are that she was serving as Lecturer of Zoology at Government Girls Degree College Sheikh Maltoon, Mardan while her husband Mr. Farooq Jan was serving as Lecturer in Biology at Abdul Wali Khan University, Mardan. Mr. Farooq Jan was awarded scholarship by the University for Ph.D in Climate Dynamics and</p>

*[Handwritten signature]*  
15.11.16

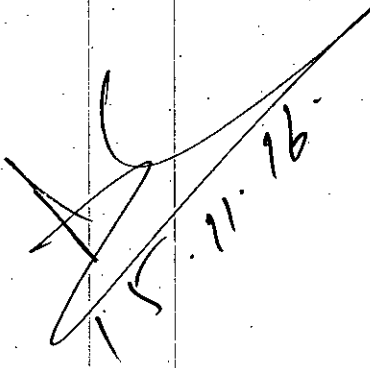
Environment Biology at the Georg -August University of Gottingen Germany in the year, 2011. Appellant accompanied her husband after obtaining ex-Pakistan leave for a period of 2 years w.e.f. 01.09.2011 to 31.08.2013 sanctioned vide notification dated 11.10.2011. Appellant then also secured admission abroad for improving her qualification which was allowed to her vide Certificate of Enrollment dated 21.06.2013. On the strength of the said admission she applied for extension of leave for 27 months w.e.f. 01.09.2013 to 30.06.2016 which was however regretted vide letter dated 02.09.2014. Appellant repeated her request for leave vide application dated 12.09.2014 and, meanwhile, also developed chronic health problem constraining her to undergo major surgery abroad in Klinikum Hospital Gottingen Germany where-after she returned and submitted her arrival report dated 16.05.2015. On coming to know of departmental disciplinary proceedings on the allegations of absence she submitted application dated 25.05.2015 to the Chief Secretary (respondent No.2) which was endorsed by him to the Secretary Higher Education Department (respondent No. 3) on 27.05.2015 which remained nonresponsive constraining her to submit two other applications dated 28.05.2015 and 01.06.2015 to respondent No. 3 but of no avail and subsequently, vide impugned order dated 04.06.2015 appellant was removed from service for the alleged absence where-against she preferred departmental appeal on 09.06.2015 and after lapse of statutory period, the instant service appeal was preferred.

15.11.16.

4. Learned counsel for the appellant has argued that the appellant had proceeded abroad after obtaining 2 years ex-Pakistan leave w.e.f. 01.09.2011 to 31.08.2013 alongwith N.O.C for proceedings abroad sanctioned vide notification dated 11<sup>th</sup> October 2011. That departmental proceedings and impugned order are against facts and law as the appellant was afforded no opportunity of hearing despite her availability. That the so-called notice under Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was not issued by the competent authority i.e. the Chief Secretary. That even the publication of notice in the newspapers were issued under the signature of the Secretary to Government of Khyber Pakhtunkhwa Higher Education Department who was not competent authority within the meaning of E&D Rules, 2011. That the respondents were bound to have afforded opportunity of hearing to the appellant as she was having a valid defence of ailment in her favour as she had fallen ill abroad and was therefore not in a position to travel and assume duty.

5. In support of his stance learned counsel for the appellant has referred to and placed reliance on Articles 4 & 10-A of Constitution of Islamic Republic of Pakistan, 1973, Rule-12 of Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 and case-laws reported as 2001-PLC (C.S) 771 (Quetta High Court) & 2000-PLC(C.S) 346 (Supreme Court of Pakistan).

6. Learned Addl. Advocate General has argued that though

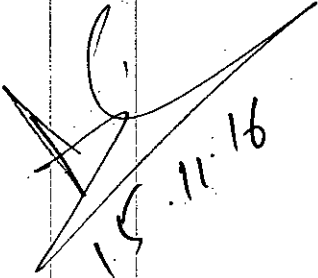
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the appellant was granted ex-Pakistan leave alongwith N.O.C for proceeding abroad however she failed to resume duty after the expiry of the said leave. That grant of leave was the sole discretion of the authority and the same was not extended in its discretion by the authority in her favour. He further argued that the appellant opted to get admission for improving her qualification without the requisite prior approval of the department. That the appellant failed to show responsible behavior. That the codal formalities i.e. issuance of notice to the appellant followed by publication in leading newspapers were complied with and where-after the impugned order was passed which is in accordance with law and warrants no interference.

7. We have heard arguments of learned counsel for the parties and perused the record.

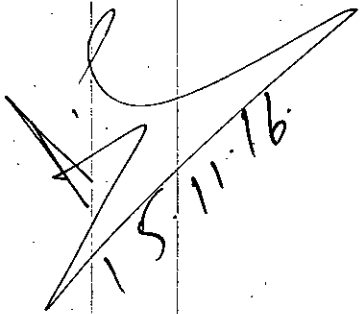
8. It is necessary to mentioned that this Tribunal vide judgment dated 20.07.2016, had earlier remitted the matter to the respondents with the directions to decide the departmental appeal of the appellant within a period of one month after receipt of the judgment however the appellant preferred appeal before the august Supreme Court of Pakistan which was accepted vide worthy judgment dated 17.10.2016 and the judgment of this Tribunal was set aside and the case was sent back to this Tribunal for decision afresh in accordance with law within a period of 60 days.

9. It is not disputable that the appellant remained absent from duty after expiry of her ex-Pakistan leave granted w.e.f.

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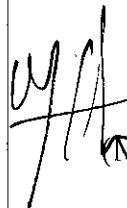
01.09.2011 to 31.08.2013. The application of the appellant for extension of leave was regretted vide letter dated 02.09.2014 constraining the respondents to proceed against the appellant under the provisions of Rule 7 read with Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. It was not disputed before us that the competent authority for the purpose of the said rules is the Chief Secretary (respondent No. 2). A careful perusal of Rule- 9 would suggest that it was for the competent authority i.e. the Chief Secretary to have issued notice to the appellant and, in case of no response, should have published such a notice in atleast in 2 leading newspapers directing the appellant to resume duty within 15 days of the publication of such notice. In the case in hand the said notice was issued by the Secretary Government of Khyber Pakhtunkhwa Higher Education Department (respondent No. 3) who is not competent authority for the purpose of the said Rules and as such we are of the humble view that the said notice was not issued by the competent authority and was therefore liable to be set aside. The respondents were obliged to have proceeded against the appellant in accordance with law and in the mode and manners prescribed by law and departure by them from the rules had therefore invalidated the proceedings as observed in a reported case 2001-PLC(C.S)771 (Quetta High Court).

10. Additionally the appellant had presented herself for duty and allied matters on 16.05.2015 as she had submitted her arrival report wherein she had even stated reasons for her absence from duty but despite the said developments appellant

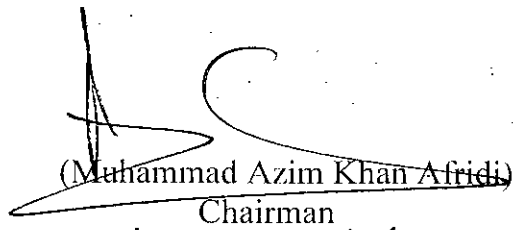
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was deprived of opportunity of hearing and was therefore treated otherwise than in due course of law and fairly.

11. In the circumstances narrated above we are of the view that the enquiry conducted by the respondents <sup>is</sup> not tenable in the eyes of law. We are therefore constrained to accept the present appeal and set aside the impugned order dated 04.06.2015 and reinstate the appellant in service but placing the respondents at liberty to conduct denovo enquiry against the appellant wherein she be afforded opportunity of hearing including her plea of ailment and study and there-after orders deem appropriate be passed by the competent authority. We direct that the enquiry shall be conducted and concluded within a period of 2 months from the date of receipt of this judgment. In case the respondents fail to conduct and conclude the enquiry within the specified period of 2 months then it shall be deemed that the appellant has been reinstated in service and her period of absence from duty till date shall then be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Aamir Nazir)  
Member

  
(Muhammad Azim Khan Afridi)  
Chairman

07/5.11.16

ANNOUNCED  
15.11.2016

Appeal No. 1015/15

25.10.2016

Appeal received by remand from august Supreme Court of Pakistan vide order dated 20.10.2016 in C.A No. 2301/2016. Assigned to D.B for final hearing and disposal for 15.11.2016. Notices to parties be issued for the date fixed before D.B.

*Noted  
D 26/10/2016*

  
Chairman

25-10-16

by re- and

appeal received) from august supreme  
Court of Pakistan vide order dated 20/10/16  
in c.A No. 2301/2016. Assigned to D. B  
for final hearing and disposal for 15/11/16  
Notices to parties be issued from the  
date fixed before D. B.

Chairman



Ph: 9220581.  
Fax:9220406.

REGISTERED  
No. C.A.2301/2016-SCJ (Imp)  
Supreme Court of Pakistan.

Islamabad, 20-10-, 2016.

From

The Registrar,  
Supreme Court of Pakistan,  
Islamabad.

To

The Registrar  
K.P.K. Service Tribunal,  
Peshawar. *YODR &*

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 1054

Date 21-10-16

Subject:- Civil Appeal No. 2301 of 2016.

Out of

Civil Petition No. 2638 of 2016.

Mrs. Rushda Hibib.

VERSUS

The Chief Minister, Province of K.P.K., Peshawar & others.

**On appeal from the Judgment and Order of the K.P.K. Service Tribunal, Peshawar dated 20.7.2016, in Appeal No.1015/2015.**

Dear Sir,

I am directed to forward herewith a certified copy of the Order of this Court dated 17.10.2016, converting into appeal the above cited civil petition, allowing and remanding the same, in the terms stated therein, for immediate necessary action.

I am also to invite your attention to the directions of the Court contained in the enclosed Order for immediate compliance.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order:

Yours faithfully

*Submitted for Personal Please.*

*Am On*  
(MUHAMMAD MUJAHID MEHMOOD)  
ASSISTANT REGISTRAR (IMP)  
FOR REGISTRAR

*Hon'ble  
Chairman.*

*Fix before Court*

*25/10/16*  
*25.10.16*

**IN THE SUPREME COURT OF PAKISTAN**  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE EJAZ AFZAL KHAN.  
MR. JUSTICE DOST MUHAMMAD KHAN.  
MR. JUSTICE FAISAL ARAB.

**CIVIL PETITION NO. 2638 OF 2016**

(Against the judgment dt. 20.07.2016  
passed by the Khyber Pakhtunkhwa  
Service Tribunal, Peshawar in Appeal  
No. 1015 of 2015).

Mrs. Rushda-Habib.

...Petitioner(s)

Versus

The Chief Minister Province of KPK, Peshawar and others.

...Respondent(s)

For the petitioner(s):

Mr. Khushdil Khan, ASC.  
Mir Adam Khan, AOR

For the respondent(s):

Mr. Waqar Ahmed Khan, Addl. A. G. KPK.  
Mr. M. Aslam S. O.  
Khushi Muhammad, S.O.

Date of Hearing:

17.10.2016.

**ORDER**

**EJAZ AFZAL KHAN, J.-** This petition for leave to appeal has arisen out of the judgment dated 20.07.2016 of the KPK Service Tribunal, Peshawar whereby the it allowed the appeal filed by the petitioner and send the case back to the Departmental Appellate Authority for decision afresh.

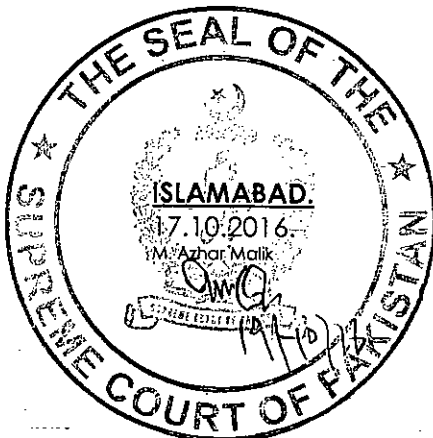
2. Learned ASC appearing on behalf of the petitioner contended that where Section 4 of the KPK Service Tribunals Act provides that if the Departmental Appellate Authority fails to decide the case within a period of 90 days the aggrieved civil servant has a right to file an appeal before the Tribunal, therefore, the appeal thus filed before Tribunal should have been decided on merits.

3. The learned Addl. A. G. straightway conceded by stating that the case be sent back to the Tribunal for decision afresh in accordance with law. In this view of the matter, we convert this petition into appeal, set aside the impugned judgment and send the case back to the Tribunal for decision afresh in accordance with law within a period of 60 days.

Sd/- Ejaz Afzal Khan, J.  
Sd/- Dost Muhammad Khan, J.  
Sd/- Faisal Arab, J

Certified to be True Copy

*[Signature]*  
Court Associate  
Supreme Court of Pakistan  
Islamabad



S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	20.07.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO. 1015/2015</p> <p style="text-align: center;">(Rushda Habib-vs- Chief Minister, Province of Khyber Pakhtunkhwa, Chief Ministers Secretariat, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p>Appellant with counsel (Mr. Khushdil Khan, Advocate) and Mr. Ziaullah, GP for respondents present.</p> <p>2. Appointed on 27.05.2005 in the Education Department of Khyber Pakhtunkhwa, the appellant was stated to be a lecturer of Zoology in the GGDC Sheikh Maltoon Mardan. Extra Ordinary Leave was granted to the appellant for two years w.e.f 01.09.2011 to 31.08.2013. Her second application for extension in leave for two years was regretted by the respondents vide their order dated 02.09.2014 and she was directed to resume duty within ten days of the receipt of the above letter otherwise she will be proceeded against under Khyber Pakhtunkhwa Civil Servants (E&amp;D)Rules 2011. She did not timely put in appearance and was proceeded against. Consequently vide impugned order dated 04.06.2015, the appellant was removed from service with immediate effect on the ground of her willful absence from duty. Her departmental appeal dated 08.06.2015 is stated to have not yet been decided, hence this appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p>

3. Arguments heard and record perused.

4. Learned counsel for the appellant while narrating facts of the case stated that one Farooq Jan, a Lecturer in the Abdul Wali Khan University, Mardan is the husband of the appellant who was sent by Abdul Wali Khan University, Mardan to Germany for PHD. The appellant was also abroad with her husband. She, in order to improve her own education got enrolment in Germany. Besides that, she also fell ill and underwent a surgery. When got well, she returned to Pakistan, and put in arrival report but she also came to know that the disciplinary proceedings against her were in the final stages. That she also knocked doors of the higher authorities but in vain. On legal side the learned counsel for the appellant argued that under Rule-12 of the Civil Servants Revised Leave Rules 1981, the appellant had a right of extra ordinary leave for a period up to five years. His second submission is that when she put in appearance and submitted arrival report to the Director Higher Education on 16.05.2015, she should not have been removed from service under Rule-09 of the E&D Rules-2011. He also took the plea that the requirements of service of notices through registered post as provided under Section-26 of the General Clauses Act were not fulfilled nor citation of the notice in the Daily Mashriq and Daily AJJ can be counted as publication in the leading news paper. The learned counsel for the appellant further argued that extension in extra ordinary leave was arbitrarily, unjustly and unjustly regretted by the respondents. He also submitted that opportunity of defense and personal hearing has not been provided to the appellant and thus the appellant has been wrongly and whimsically removed from service. He requested that the appellant may be reinstated into service with all back benefits.

5. This appeal was resisted by learned Government Pleader on behalf of the Government by submitting that in pursuance of provision of Rule-09,(ibid) the appellant was duly issued notices at her home address followed by citation in the two daily news papers Daily Mashriq and Daily AJJ which are the leading news papers of the country. He also submitted that the absence was quite willful as the appellant fully knew that her application for extension for leave has not been allowed and in order to avoid disciplinary proceedings she had been asked to report for duty within ten days. In this respect he referred the admission of the appellant made in her application dated 12.09.2014 addressed to the Principal of GGDC Sheikh Maltoon Mardan, copy of which is available on record. He further argued that grant of leave is not a vested right of the civil servant but under Section-22 of the Civil Servant Act, 1973, the same falls in the discretion of the competent authority. He denied that refusal in extension in leave was arbitrary or whimsical decision. He also argued that absence of the appellant was willful and she was rightly proceeded under Rule-9 of the E&D Ruls-2011 after observing all the codal formalities. He submitted that the appeal may be dismissed. On support of his contentions, he referred to 2011 PLC (C.S)990, 2011 SCMR 1429 AND 2009 SCMR 1121. He submitted that the appeal may be dismissed.


6. We have heard learned counsel for the appellant and learned GP for the state at quite length and perused the record with their assistance. According to Section-22 of the Civil Servant Act, 1973, grant of leave is subject which falls in the discretion of the competent authority. According to record, the appellant was well aware that her application in extension for leave has been regretted by the competent authority and in case she failed to ~~ass~~sume duty, disciplinary proceedings will be initiated against her. The record further reveals that she got enrolled in Germany University only

two months prior to the expiry of her term of extra ordinary leave for two years which in the opinion of the Tribunal was not an opportune time. Appellant as Government Servant was also required to have asked for NOC for such admission. Similarly, in case of her illness she should have applied for leave on medical grounds which she has not done.

7. We have carefully gone through Rule-9 of the E&D Rules-2011. Since absence of the appellant, in the stated situation was a seemingly willful absence, therefore the department had no alternative but to take action under the said rule. On the record copy of the notices under Rule-9 issued to the appellant are available followed by citation in the daily news papers of Daily Mashriq(dated: 27.02.2015) and Daily AJJ(dated: 23.02.2015) which are the two leading news papers. According to the said Rule-9, since the appellant failed to submit arrival within the stipulated period, therefore she was legally proceeded ex-Parte. The said Rule-9 further states that its provision can be invoked even for an absence period of seven days. Absence of the appellant for two years was a valid ground not to stop disciplinary proceedings against the appellant which were in the final stage and required only a nod from the competent authority. According to Rule-5(1)(IV) of the E&D Rules-2011, it was not reasonably practicable for the respondents now to grant appellant opportunity of the showing cause or personal hearing. In the light of the foregoing discussion, the Tribunal is of the view that departmental proceedings against the appellant are covered under the law.

8. When all the above stated, this cannot be denied that departmental appeal of the appellant has not been decided in which an opportunity of personal hearing can yet be availed by the appellant. This may also be observed that under sub-rule-3 of Rule-12 of the Civil Servants Revised

leave rules-1981, the departmental authority is vested with powers to grant retrospectively extra ordinary leave (without pay) in lieu of the absence period. We therefore, deem it appropriate to remit the matter to the respondents with the directions to decide departmental appeal of the appellant within a period of one month after receipt of this judgment. We also direct that opportunity of personal hearing be also provided to the appellant. The case is remitted to the respondents and the appeal is disposed of accordingly. Parties are left to bear their own cost. File be consigned to the record room.



(AHMAD HASSAN)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER

ANNOUNCED  
20.07.2016

30.03.2016

Dr. Farooq, husband of the appellant, on behalf of the appellant and Mr. Muhammad Irfan, AD alongwith Assistant A.G for respondents present. Written reply by respondents No. 2, 3 and 4 submitted. The learned Assistant AG relies on the same on behalf of respondent No. 1. The appeal is assigned to D.B for rejoinder and final hearing for 19.7.2016.

  
Chairman

19.07.2016

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Arguments heard. To come up for order on 20.07.2016.

  
MEMBER

  
MEMBER



23.09.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Lecturer in BPS-17 when subjected to inquiry on the allegations of wilful absence and removed from service vide impugned order dated 4.6.2015 regarding which she preferred departmental appeal on 8.6.2015 which was not responded and hence the instant service appeal on 14.9.2015.

That the appellant had gone abroad after obtaining two years ex-Pakistan leave on 11.10.2011. That she applied for extension which was regretted and when she returned and applied for resuming the duty she was removed from service without complying with the provisions of Rule 9 of KPK E & D Rules, 2011. That the impugned order is without any lawful justification.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 1.12.2015 before S.B.

Appellant Deposited  
Security & Process Fee

23-9-2015

  
Chairman

01.12.2015

Dr. Farooq, husband of the appellant, on behalf of the appellant and Mr. Murad Khan, Supdt. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 30.3.2016 before S.B.



  
Chairman

FORM-A

FORM OF ORDER SHEET

Court 1015 / 2015

Case No. \_\_\_\_\_

	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	14.09.2015	<p>The appeal of Mrs. Rushda Habib presented to-day Mr. Khushdil Khan, Advocate may be entered in the institution register and put up to the Worthy-Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case be put up before the S.Bench for preliminary hearing on <u>23-9-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. 1015 / of 2015

Mrs. Rushda Habib,  
Ex-Lecturer in Zoology ... .. Appellant

VERSUS

The Chief Minister,  
Province of Khyber Pakhtunkhwa and others... .. Respondents

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3.	Copy of Certificate of Enrolment of appellant as student of MS Programme	21.06.2013	B	0 - 8
4.	Copy of letter written by respondent No.4 to appellant showing inability to accede her request	02.09.2014	C	0 - 9
5.	Copy of application of appellant for extension in leave from 01.09.2013 to 30.06.2015	12.09.2014	D	0 - 10
6.	Copies of Medical papers pertaining to operation of appellant	21.12.2014	E	11 - 13
7.	Copy of arrival report of appellant addressed to respondent No.1	16.05.2015	F	0 - 14
8.	Copy of letter whereby arrival report of appellant was sent to respondent No.3	22.05.2015	G	0 - 15
9.	Copy of the same arrival report addressed to respondent No.3	19.05.2015	H	0 - 16
10.	Copy of application to respondent No.2	25.05.2015	I	17 - 18

11.	Copies of application to respondent No.3	28.05.2015	J	0 – 19
12.	Copy of application to respondent No.3	01.06.2015	K	0 – 20
13.	Copy of impugned order whereby appellant was removed from service with immediate effect on ground of alleged absence	04.06.2015	L	0 – 21
14.	Copy of Departmental Appeal to respondent No.1	08.06.2015	M	22 – 25
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Appellant

Through:

  
**(Khush Dil Khan)**

Advocate

Supreme Court of Pakistan

9-B, Haroon Mansion

Khyber Bazar Peshawar

Cell # 0300-5887691

Dated: .08.2015

(P)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. 1015 / of 2015

K. W. P. Province  
Service Tribunal

Diary No. 1068

Dated 14/9/2015

Mrs. Rushda Habib,  
Ex-Lecturer in Zoology  
Government Girls Degree College  
Sheikh Maltoon, Mardan  
Higher Education Department  
Khyber Pakhtunkhwa, Peshawar...

... Appellant

VERSUS

1. The Chief Minister,  
Province of Khyber Pakhtunkhwa,  
Chief Ministers' Secretariat, Peshawar.
2. The Chief Secretary,  
Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
3. The Secretary,  
Government of Khyber Pakhtunkhwa,  
Higher Education Department,  
Civil Secretariat, Peshawar.
4. Director of Higher Education,  
Directorate of Higher Education  
Khyber Pakhtunkhwa, Peshawar...

... Respondents

~~Filed to-1015~~  
~~1015~~

APPEAL UNDER SECTION 4 OF KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT,  
1974 AGAINST THE IMPUGNED ORDER  
DATED 4.6.2015 THEREBY APPELLANT WAS  
REMOVED FROM SERVICE WITH IMMEDIATE  
EFFECT FOR THE REASON OF HER ALLEGED  
ABSENCE FROM DUTY AGAINST WHICH SHE  
FILED DEPARTMENTAL APPEAL ON 9.6.2015  
BEFORE THE RESPONDENT No. 1 UNDER

SECTION 22 OF THE KHYBER  
PAKHTUNKHWA CIVIL SERVANTS ACT, 1973  
READ WITH RULE 17 OF THE KHYBER  
PAKHTUNKHWA GOVERNMENT SERVANTS  
(EFFICIENCY AND DISCIPLINE) RULES, 2011  
BUT SAME WAS NOT DISPOSED OF WITHIN  
THE STATUTORY PERIOD OF NINETY DAYS.

Respectfully Sheweth:

Facts giving rise to the instant appeal are as under:-

1. That before appellant's marriage, she was the holder of Domicile of the Province of Punjab being permanent resident of District Attock on the basis of which she appointed as Lecturer of Zoology (BPS-17) on the recommendation of the Punjab Public Service Commission vide order No. SO(CE-III)21-1/2005 dated 11.05.2005. When the Khyber Pakhtunkhwa Public Service Commission advertised posts of different subjects in the Higher Education Department, being qualified in terms thereof she applied for the post of Zoology Subject through proper channel on the basis of Khyber Pakhtunkhwa Domicile which she obtained under spouse policy. Resultantly she was recommended and appointed as Lecturer of Zoology Subject vide Notification No. SO(FC)HE/2/08 Recruitment (Vol-IV) dated 27.05.2008 and posted in Government Girls Degree College No.2 Charsadda vide order dated 27.06.2008 wherefrom she was posted in Government Girls Degree College Sheikh Maltoon Mardan. Since then she was performing her duties efficiently and devotedly having excellence service record spreading over more than 10 years.
2. That appellant's husband Mr. Farooq Jan is the employee of **Abdul Wali Khan University, Mardan** holding the post of Lecturer in Biology. He was awarded scholarship from the University for doing

**Ph.D in Climate Dynamics and Environmental Biology** at the **Georg - August University of Gottingen Germany** in the year 2011. Since it was not possible for her to live alone at her home station in the prevailed law and order situation of the Khyber Pakhtunkhwa, therefore, she applied for 2 years Ex-Pakistan Leave which was granted to her with effect from 1.9.2011 to 31.8.2013 by notification dated 11.10.2011 of the respondent No.3 (Annexed-A).

3. That in order to avail the opportunity of improving her qualifications by getting higher education in the said University, appellant applied to MS Programme in the faculty of Biodiversity and Ecology which was allowed to her vide Certificate of Enrolment issued on 21.6.2013 (Annexed-B). Since the period of leave was also to be expired after 2 months of her admission, therefore, she submitted written requests to respondents No.3 and 4 for extension in leave period for further 27 months from 1.9.2013 to 30.06.2015 enabling her to complete her higher studies but she was informed through a letter dated 2.9.2014 (Annexed-C) that her request was not acceded to.
4. That appellant once again requested the higher authorities through her application dated 12.9.2014 (Annexed-D) for the requisite extension in leave period in order to complete her higher studies. Her such request was yet under process when suddenly some chronic problem was developed in appellant's abdomen for which she was hospitalized in the **Klinikum Hospital Gottingen Germany**, resultantly her Gallbladder was removed through major operation. Necessary Medical papers of surgery (Annexed-E).
5. That on complete recovery of her health, appellant immediately came back to home station and submitted her arrival report dated 16.5.2015 (Annexed-F) to respondent No.4 who forwarded the same under covering letter dated 22.5.2013 (Annexed-G) to respondent No.3. Similarly appellant also submitted the same arrival report dated

19.5.2015 (Annexed-H) to respondent No.3 but no action was taken thereon.

- 6. That meanwhile appellant came to know that respondent No.3 has initiated disciplinary proceedings against her on the ground of alleged absence thus she filed an application dated 25.5.2015 (Annexed-I) before the respondent No.2 therein she also requested for personal hearing which was endorsed to respondent No.3 on 27.5.2015 but no action was taken thereon also. Then she filed two other applications to respondent No.3 on 28.5.2015 (Annexed-J) and 1.6.2015 (Annexed-K) but all these applications/requests were ignored without cogent reasons and legal justification.
- 7. That, resultantly all the efforts of appellant failed and respondent No.2 passed the impugned order dated 4.6.2015 (Annexed-L) thereby she was removed from service with immediate effect on the baseless plea of alleged absence issued under the signature of respondent No.3. Appellant filed Departmental Appeal before the respondent No.1 on 8.6.2015 (Annexed-M) but same was not disposed of within the statutory period of Ninety days.

**Hence this appeal is submitted on the following amongst other**

**GROUND:**

- a. That non joining her duties on due date was not deliberate but due to unavoidable circumstances as mentioned in the above facts which is not amounting to willful absence. Thus the impugned order based on such ground is not sustainable under the law being unjustified and malafide.
- b. That appellant immediately submitted her arrival report to authorities concerned after arrival to home station which was also pursued vigilantly by her but then respondent authorities ignored the same without cogent reasons though the impugned



order was not yet passed. In such circumstances appellant was not treated in accordance with law and rules on subject and the impugned order was passed in arbitrary manner which is illegal, without lawful authority and inoperative against her rights.

- c. That the impugned order has been passed in violation of provisions of Rule 9 of the Rules, 2011. Therefore, the impugned order is unlawful, void ab-initio and without lawful authority liable to be set aside.
- d. That the impugned order was passed at the back of appellant and she was condemned unheard. No fair opportunity of defence was provided to her and in such circumstances the impugned order is unlawful and not sustainable being violative of principle of natural justice.
- e. That once appellant submitted her arrival report on 16.5.2015 before the respondent No.4 and the same was endorsed to respondent No.3 before passing the impugned order then the respondent authorities have no legal justification to continue the proceedings against appellant. Hence the subsequent proceedings and the impugned order are unjustified and unfair not sustainable under the rules being malafide.
- f. That no personal hearing was given to appellant inspite of her repeated written requests which she made before the passing of impugned order. Hence the respondent authorities failed to observe this mandatory obligation of the law which made prejudice the impugned order.
- g. That impugned order was not only passed against the law but also violative of the fundamental rights of the appellant guaranteed under Article 10-A of the Constitution, 1973. Hence the impugned order is unlawful and unconstitutional liable to be set aside.

h. That respondent No.1 was under legal obligation to consider the departmental appeal of appellant in accordance with law on subject and to provide her a fair opportunity of personal hearing but he also acted malafidely and arbitrarily kept pending her departmental appeal without cogent reason which is unjust and unfair.

It is, therefore, humbly prayed that on acceptance of this Appeal, the impugned order dated 4.6.2015 whereby appellant was removed from service with immediate effect may kindly be set aside and she may graciously be reinstated into service with all back benefits and the period of alleged absence may also be treated Leave as due to her in view of her long service.

Appellant

Through:

(Khush Dil Khan)

Advocate

Supreme Court of Pakistan

9-B, Haroon Mansion

Khyber Bazar Peshawar

Cell # 0300-5887691

Dated: .08.2015



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION, ARCHIVES &  
LIBRARIES DEPARTMENT

Annex-A  
P-7

Dated Peshawar: the 11<sup>th</sup> Oct, 2011.

NOTIFICATION

**NO. SO(FC)HE/1-2/09/Rushda Habib.** The Competent Authority is pleased to grant two (02) years Ex-Pakistan leave w.e.f. 01-09-2011 to 31-08-2013 (without pay) in respect of Ms. Rushda Habib, lecturer in Zoology (BS-17) Govt. Girls Degree College Seikh Maltoon Mardan and NOC for proceeding abroad.

Note: No financial implications whatsoever will be borne by the Provincial Government.

SECRETARY TO  
GOVT. OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION DEPARTMENT.

**Endst: No. & Date Even**

Copy forwarded to the:-

1. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. Principal Govt. Girls Degree College Seikh Maltoon Mardan.
3. District Accounts office Mardan.
4. Officer Concerned.

  
(BIBI FATIMA)  
SECTION OFFICER (Female Colleges)

ATTESTED



### Certificate of Enrolment

Issuing date: 2013/06/21

Rushda Habib, born on 21.08.1979 in Attock, has been enrolled at Göttingen University with matriculation no. 21336108.

In the winter semester 2013/14 (01.10.2013 - 31.03.2014) she is enrolled for the following programme(s), and she is not on leave.

Semester	Programme	Degree	Subject	Major subject (HF) Minor subject (NF)	Subject-related semester(FS) Clinical sem.(KS)
WS 2013/14	1. prog.	Master	Biological Diversity, Ecology and Evolution	HF	1. FS

\* Student was on leave during semesters marked by an asterisk.

ATTESTED 

This document is an unofficial translation provided for your assistance; the original German version only is legally binding. This certificate is computer-generated and is valid without a signature / seal. Amendments and / or modifications must be confirmed explicitly and in writing by the Registrar's Office of Göttingen University.

Verification key: GLCh AonT XL77

In order to verify this certificate, please go to the following web address: <http://sb.uni-goettingen.de/verify>

DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.  
PHONE #091-9211025, 9211803, 9213009, 9210242 FAX # 091-9210215

133  
Annex-C

Ms. Rushda Habib Zoology

Dated Peshawar, the

2/9/2014  
P-9

Ms. Rushda Habib  
Lecturer in Zoology  
D/o Habib Ur Rahman, House # R-239 Eid gah, Attock,

Subject-

EXTENSION IN EX-PAKISTAN LEAVE W.E.F 1/9/2013 TO 31/12/2015

I am directed to refer to this office letter No. 14514 dated 27-06-2014 and the Provincial Govt. letter No. Section Officer (Colleges- III) HE/1-2/09/Rushda Habib dated 27-06-2014 wherein he stated that your case for extension of two years Ex- Pakistan leave (without pay) was sent to Finance Department & regrets its inability to accede the request of this Department.

You are hereby again directed to assume your duty within 10-days after receipt of this letter, failing which disciplinary action will be initiated against you under E & D Rules, 2011.

*Rubia*

DY. DIRECTOR ESTABLISHMENT (F)

Encl: No. \_\_\_\_\_

Copy of the above is forwarded to the:

- 1) Section Officer (Colleges-III) Higher Education Department w/r to your letter No. and dated noted above.
- 2) Principal Govt Girls Degree College Shaikh Maltoon (Mardan) for necessary action.

ATTACHED

DY. DIRECTOR ESTABLISHMENT (F)

Annex-D

P-10

To

The Principal G.G.D.C Sheikh Maltoon Mardan.

Subject: Extension in Ex-Pakistan Leave w.e.f 01.09.2013 to 30.06.2015

Respected Madam,

Ref: Dy. Director Establishment (F) letter No. 18573/ CA-V/Estt: Branch/A-12/Ms. Rushda Habib/ Zoology dated 02/09/ 2014 (Copy attached), I have been asked that my application for extension in leave (without pay) has not been accepted and that I have been asked to join my duties within 10 days.


**Clarification about my current status:** As a law abiding Government official, I came to Germany through proper channel seeking proper permission from Government, **without pay and without any financial implications vide notification No. SO (FC) HE / 1-2/09** (Copy attached). I haven't received a single penny from Government during my ex-Pakistan leave.

I am currently enrolled as MS student at the Faculty of Biodiversity and Ecology Georg-August-University Germany (Enrollment certificate attached). I along with my two kids am residing with my husband who is PhD Scholar from Abdul Wali Khan University Mardan, doing his PhD here in Göttingen University Germany. My husband will complete his PhD in June 2015 and I will complete my MS in June 2015.

**My request:** As the Higher Education department promotes and encourages the higher studies of teachers; I request your kind office to extend my leave without pay till June 2015, so that I may complete my MS studies on my own expenses and equip myself with latest trends and technologies in the field of Biology enabling me to serve the Higher Education department to the best of my abilities.

I hope you will consider my application and will allow me to complete my MS studies.

Sincerely yours

  
Rushda Habib

Lecturer in Zoology

G.G.D.C Sheikh Maltoon Mardan

Cc:

The Secretary of Higher Education (Colleges).

Director Higher Education, Government of Khyber Pakhtunkhwa, Peshawar.

Personal file.

ATTESTED

21.12.14 Datum

## Vorläufiger Entlassungsbericht

Sehr geehrte Frau Kollegin / sehr geehrter Herr-Kollege Dr. Fleckenstein

besten Dank für die freundliche Überweisung

Ihrer Patientin / Ihres Patienten Habib, Bushda ; geb. 21.08.79

die sich / der-sich vom 18.12.14 bis 21.12.14 in unserer stationären  
Behandlung auf Station 6014 (Tel.-Nr.: 0551 39-6133) befand.

Diagnosen: Cholezystolithiasis ohne Cholezystitis  
Z.n. ERCP mit temp. Stent-Einlage 05/14

Therapie: Lap. Cholezystektomie am 19.12.14

Postop. Verlauf: komplikationslose Operation, komplikationsloser  
postoperativer Verlauf. Pat. beschwerdefrei.  
Wunde reizlos.

Medikation und Procedere: Novalgin bei Bed. bis zu 4x50°

Eine Wiedervorstellung auf Station / in der chirurgischen Poliklinik ist für bei klin. Verschlechterung  
vereinbart worden / nicht erforderlich. Ein ausführlicher Arztbrief folgt.

Mit freundlichen Grüßen



UNIVERSITÄTSMEDIZIN GÖTTINGEN  
GEORG AUGUST-UNIVERSITÄT  
Klinik für Allgemein-, Viszeral- u. Kinderchirurgie  
Station 6014  
Robert-Koch-Str. 40, 37075 Göttingen  
Stationsarzt  
(Kosmit)

UM  
Änderung  
Einrichtung

Zertifiziert nach  
DIN EN ISO 9001:2008



Interdisziplinäre Notaufnahme, 37099 Göttingen  
Frau/Herrn  
Dr. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



DKV Deutsche Krankenvers.  
Habib W  
Rushda \* 21.08.79  
Hermann-Rein-Str. 7  
D 37075 Göttingen  
  
087800800 999999900 11.14  
Pat.Nr.: 1290310 8 MEDI  
Fallnr.: 6922196 0

Sehr geehrte Frau Kollegin/Sehr geehrter Herr Kollege,

der/die o.g. Patient/in wurde in unserer Interdisziplinären Notaufnahme

stationär  vorstationär /  ambulant am/vom 10.11.14 bis \_\_\_\_\_ behandelt. Er/sie wurde  entlassen/  
 in das Krankenhaus \_\_\_\_\_ verlegt.  Entlassung gegen ärztlichen Rat.

Befunde, Therapie und weitere Empfehlungen: *Vorstellung mit hochhartigen OB-Schmerzen bei lab. Cholezystolithiasis. Labordiagn. hypochr. unreso-zyt. Anämie, Transaminosen ↑, ↓ Bili, ↓ Infektparameter. Sonogr. prominenter DTH, D-its-Zeichen, lt. CTU-Konsult. OP-Indikation, elektive CTE für den 13.12.14 aufgrund der rez. Symptomatik mit stat. Aufn. am 18.12.14. Pat. hat Bedarfsmedis. rezeptiert bekommen (Pantozol, Buscopan empfohlen; darüber hinaus beschwerdefrei; WV bei Beschwerden*

Diagnosen (Hauptdiagnose zuerst)

*Symptom. Cholezystolithiasis*

Erfolgte Prozeduren (bitte ankreuzen):

<input type="checkbox"/> Arterie	<input type="checkbox"/> Aszitespunktion	<input type="checkbox"/> Endotracheale Intubation	<input type="checkbox"/> Externe Kardioversion
<input type="checkbox"/> Lumbalpunktion	<input type="checkbox"/> Pleurapunktion	<input type="checkbox"/> Maskenbeatmung	<input type="checkbox"/> Reanimation
<input type="checkbox"/> Schrittmacher-Abfrage	<input type="checkbox"/> Shaldon-Katheter	<input type="checkbox"/> Systemische Thrombolysse	<input type="checkbox"/> Temporärer externer Pacer
<input type="checkbox"/> ZVK	<input type="checkbox"/> Dauerkatheter	<input type="checkbox"/> Isolierung	Beatmungsdauer (h):

Weitere Prozeduren: \_\_\_\_\_

Weiterbehandlung in \_\_\_\_\_ Tagen empfohlen:  ambulant bei Ihnen /  ambulant in unserer Poliklinik /

ambulant bei/in der/im \_\_\_\_\_  stationär: \_\_\_\_\_

Mit Kollegialen Grüßen

→ BUSCOPAN PLUS

ATTEST

Robert-Koch-Str. 40, D-37075 Göttingen  
Tel. 0551 / 39-8605  
*Stange*  
(Unterschrift)

Dr. med. STANGE

Datum: 10.11.14 Uhrzeit: 17:30

Klinik: INA Telefon-Nr. (0551) 39- \_\_\_\_\_

Behandlungsbericht TN, Version 11/2013  
Artikel-Nr. 4003103. Medizin. Klinik

Original für den  
weiterbehandelnden Arzt



Die erteilten Einwilligungserklärungen können jederzeit ohne Angaben von Gründen ganz oder teilweise widerrufen werden. Werden die Einwilligungserklärungen nicht erteilt oder widerrufen, so hat dies keine Auswirkungen auf die Behandlung in der Universitätsmedizin Göttingen. Bitte adressieren Sie den Widerruf an: Prof. Dr. med. Philipp Stroebel, Institut für Pathologie, Telefon: 0551-39-6858, Fax: 0551-39-8627, Email: philipp.stroebel@med.uni-goettingen.de

**Meldungen an das Epidemiologische Krebsregister Niedersachsen (EKN)**

Das Gesetz über das Epidemiologische Krebsregister Niedersachsen (GEKN) verpflichtet seit 2013 alle Ärzte, die eine Krebserkrankung oder einen gutartigen Hirntumor feststellen und behandeln, diese an die Vertrauensstelle des Epidemiologischen Krebsregisters (EKN) zu melden. Die UMG arbeitet eng mit dem EKN zusammen und ist verpflichtet, diese Meldungen durchzuführen. Die Meldung umfasst Personendaten, das Diagnosedatum, die Diagnose, den histologischen Befund, das erkrankte Organ, das Erkrankungsstadium sowie die Diagnosemethode und ggf. weitere Angaben zur Therapie.

Die erkrankungsspezifischen Daten werden vom EKN in jedem Fall gespeichert, der Patient kann jedoch einer Speicherung seiner Personendaten jederzeit ganz oder teilweise widersprechen, bzw. seine diesbezügliche Einwilligung widerrufen. Werden die Einverständniserklärungen nicht erteilt oder widerrufen, so hat dies keine Auswirkungen auf die Behandlung in der Universitätsmedizin Göttingen. Der Widerspruch ist an das UniversitätsKrebszentrum der UMG, Robert-Koch-Str. 40, 37075 Göttingen oder die Vertrauensstelle des EKN, Andreaastr.7, 30159 Hannover zu richten.

**Dies vorausgeschickt willige ich mit meiner Unterschrift ausdrücklich ein, dass bei Vorliegen einer Tumorerkrankung neben den erhobenen Befunden auch die Personendaten an die Vertrauensstelle des Epidemiologischen Krebsregisters Niedersachsen (EKN) übermittelt und dort für die notwendige Dauer gespeichert werden.**

Ausführliche Informationen können im UniversitätsKrebszentrum der UMG (Tel.: 0551-39-9517; Robert-Koch-Str. 40, 37075 Göttingen) sowie direkt bei der Vertrauensstelle des EKN (Tel.: 4505-356; Andreaastr.7, 30159 Hannover) angefordert werden.

DKV Deutsche Krankenvers.  
Habib W  
Rushda \* 21.08.79  
Hermann-Rein-Str. 7  
D 37075 Göttingen  
  
087800300 999999900 12.14  
Pat.Nr.: 1290310 8 CALL  
Fallnr.: 6951673 1

Antragsteller (falls nicht mit Patient identisch)  
Name, Vorname: \_\_\_\_\_  
Geburtsdatum: \_\_\_\_\_  
Straße: \_\_\_\_\_  
PLZ, Wohnort: \_\_\_\_\_

Der aufzunehmende Patient ist meine Ehefrau/mein Ehemann/mein Kind/ \_\_\_\_\_

Zusätzlich beantrage ich die nachstehend angekreuzten Wahlleistungen (gemäß dem derzeit gültigen Krankenhausentgeltgesetz) zu den in den Allgemeinen Vertragsbestimmungen (AVB) und im Krankenhausentgelttarif genannten Bedingungen.

- |                          |                                     |   |
|--------------------------|-------------------------------------|---|
| ja                       | nein                                |   |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Unterbringung im 1-Bett-Zimmer  |
| <input type="checkbox"/> | <input type="checkbox"/>            | Unterkunft und Verpflegung einer gesunden Begleitperson, deren Aufenthalt aus therapeutischen Gründen nicht erforderlich ist* |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Wahlärztliche Leistungen (Chefarztbehandlung)*  |
- \*Bitte gesonderten Antrag ausfüllen und unterschreiben

Göttingen, den 18.12.14

ATTESIED

Im Auftrag [Signature]  
Unterschrift des Mitarbeiters der UMG

[Signature]  
18.12.2014  
Unterschrift des Patienten bzw. seines Vertreters  
(bei minderjährigen Patienten des oder der Sorgeberechtigten)

Annex-F

P-14

10

The Director of Higher Education (Colleges), Government of K.P.K, Peshawar.

Subject: Resuming my duties after availing ex-pakistan leave.

R/Sir,

After availing ex-pakistan leave, I reported at the office of the principal CgDC, Shaikh Matton Mardan to resume my duties. I was asked by the principal to report to Director Colleges & explain the reason of my absence from duty after the expiry of the ex-pakistan leave.

Here with this application I have attached my admission letter into the MS programme of Göttingen University Germany. I could not complete my studies due to my hospitalization & long illness in Germany which finally culminated in the removal of my ear bladder. Due to medical reason (record attached), I could not resume my duties in time. (I had applied for leave extension (copy attached). Here I present myself at your disposal for resumption of my duties.

Yours obediently,  
Rushda Habib  
15-5-2015  
Lec: in Zoology  
CgDC Shaikh Matton Mardan

Attested

CC - Secretary Higher Education  
KPK Peshawar  
2. Personal record.

ATTESTED

Annex - G

P-157

**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.**

PHONE #091-9211025, 9211803, 9213009, 9210242 FAX # 091-9210215

NO. 12154 /CA-V/Estt: Branch/A-12/Ms Rushda Habib / Zoology Dated Peshawar, the 12/05 /2015

To

The Special Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Higher Education Department,  
Peshawar.

Subject: ARRIVAL REPORT.  
R/Sir,

I am directed to refer to the subject noted above & to enclose herewith a copy of self explanatory application alongwith other connected documents in respect of Ms Rushda Habib lecturer in Zoology Govt:Girls College, Sheikh Maltoon<sup>Mardan</sup> for necessary action with the remarks that she was granted Ex-Pakistan leave w.e.f 01-09-2011 to 31-08-2013. Then she applied for further extension in Ex-Pakistan leave for 02- years w.e.f 01-09-2013 to 30-06-2015 but her request was regretted by the Competent Authority & she was informed accordingly on her available address vide this office letter No, 14514 dated 27-06-2014 with the direction to report for duty within 10-days, but she failed to do so. In addition public notice has been issued Now she report for duty on 15-05-2015. A post in the relevant subject & scale is lying vacant at GGC, Jandool (Dir).

The case may be considered as per rule.

**ATTESTED**

*Rubi*  
DY. DIRECTOR (FEMALE)

Annex-H

P-16

To

The Secretary Higher Education

Subject: Arrival report

R/Sir,

I had been granted 2 years ex-Pakistan leave without pay w.e.f 01.09 2011 to 31.08 2013 I had sent an application for extension of my ex-pakistan leave (without pay) which was declined and I was asked to report for duty. Due to medical reason (report attached), I could not report for duty after expiry of leave. I was hospitalized in Germany and my Gall bladder was removed after along treatment. I have returned to Pakistan and have already given my arrival report to Director higher education. Director higher education intimated me verbally that disciplinary proceedings have been initiated against you in the higher education department due to noncompliance I was abroad and was not aware of this situation and disciplinary proceedings, I request you to kindly accept my arrival report and save my career. Kindly help me and give me a chance! I am an ill woman and a mother of two kids.

Yours faithfully

19.5.2015

Mrs. Rushda Habib

o/c

Lecturer in Zoology

G.G.D.C. Sheikh Maltoon Mardan

Copy to.

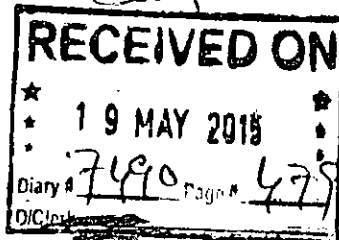
- 1. Director Higher Education Government of Khyber Pakhtunkhwa Peshawar
- 2. SO Colleges (Females) Government of Khyber Pakhtunkhwa Peshawar
- 3. SO (R1) Establishment department Government of Khyber Pakhtunkhwa Peshawar
- 4. PS to Chief Secretary Government of Khyber Pakhtunkhwa Peshawar
- 5. PS to Secretary Establishment Government of Khyber Pakhtunkhwa Peshawar

Handwritten initials and date: 19/5/15

Handwritten initials and date: 19-5-15

Handwritten initials and date: 19-5-15

DDF



19-5-2015

o/c

ATTACHED

Secy HED.  
1745  
27/5/15

Annex-1  
P-17

Before the honorable Chief Secretary Government of Khyber Pakhtunkhwa Peshawar

Subject: Review application for consideration of my case for ex-Pakistan leave on compassionate grounds and permission for my personal hearing before your good office.

Respected Sir,

With due respect it is humbly submitted that the I, Rushda Habib being M.Phil in Zoology joined the higher education department as lecturer in Zoology B.P.S 17 in the year 2008 through public service commission and have been performing my duties with hard work honestly and wholeheartedly without any adverse remarks from my seniors. My service record remained unblemished throughout.

That during my service I applied for ex-Pakistan leave as my husband was already in Germany in connection with his PhD studies under the Government awarded Scholarship at the Georg-August-University of Göttingen Germany. The ex-Pakistan leave so applied was granted and the NOC was also issued by the competent authority w.e.f 01.09.2011 to 31.08.2013 accordingly.

That in order to make use best use of the already granted leave and avail the opportunity of improving my qualification, I sought admission in the MS program of Göttingen University Germany. in the same faculty of Biodiversity and Ecology, where my husband was doing his PhD. I pursued my course work which was to be completed within 2 years. Therefore I felt it necessary being my foremost duty to immediately inform my department in Pakistan about my admission. Thus I requested for extension in my ex-Pakistan leave up to June 2015 for the very purpose. During this time my husband was also expected to complete his PhD and I informed my department that I will complete my MS and my husband will complete his PhD up to June 2015 and we will return to Pakistan to resume our duties.

That it was quite unfortunate that some pregnancy complications developed in mine as a result of which I gave birth to a child through a surgery in Klinikum Hospital Göttingen Germany. Post birth complications increased coupled with Pancreatitis, partial failure of major alimentary canal organs coupled with the development of stones in my Gall bladder. The doctors advised me to stay in Germany and complete my treatment. After a long treatment the doctors finally made another surgery and removed Gall bladder from my body and also suggested me to take complete bed rest being unable to undertake long journey (complete medical record already submitted to DHE and Secretary higher education along with my arrival/joining report). Due to my adverse medical condition and constant shiftings between my place of residence and hospital I could not submit my medical record to Director Higher education, hoping that once my treatment is complete and I recover, I will send the complete medical record to my department back in Pakistan.

That neither I received any intimation from my department in Pakistan regarding sanction/rejection of my last application in ex-Pakistan leave nor any show cause notice/ charge sheet whatsoever was received by me in respect of the disciplinary action initiated by the department against me despite the fact that department knew very well that I was in Göttingen City Germany. It is worth mentioning that although in my previous applications submitted to the department, the address of mine as well as my husband, where we were getting education, was

A. RISTEL

very much available with the department, yet no communication was never ever made by the department at my address in Germany. During this period neither any notice nor any intimation whatsoever were received by me about initiation of disciplinary action by the department against me

That as soon as I felt some recovery in my health and came into the position of travelling to proceed back to Pakistan, I immediately came back to Pakistan and on my personal inquiry it revealed that disciplinary action against me, on the basis of willful absence from duty is under process. I have returned to Pakistan and already submitted my joining/ arrival report to Director Higher Education on 15.05.2015. The Director higher education verbally intimated me that disciplinary proceedings have already been initiated against you in the higher education department and a major penalty of removal from service is under consideration. I therefore rushed to Secretary higher education.

Accordingly, I reported to the Secretary higher education and explained the actual facts of my absence from duty, which were quite beyond my control. The honorable secretary informed me about the disciplinary case pending upon adjudication with the Chief Secretary where at this stage review application may be preferred. Hence I am submitting a review application at your kind office. Your honor is humbly requested to kindly observe from the above explanation that firstly, I did <sup>not</sup> remain absent from duty willfully; secondly no intimation in respect of disciplinary action or issuance of show cause notice/charge sheet with regard to the alleged charge was ever conveyed to me, thirdly no opportunity as per law has since been provided to me to defend my case & explain my position and finally the circumstances as elaborated above were totally beyond my control because of serious complications in pregnancy and subsequent surgeries of my Gall bladder which was totally removed from my body to save my life.

It is therefore most humbly and earnestly requested that my instant application may kindly be accepted and my case may please be reviewed after personal hearing and I may be allowed to resume my duties according to law and rules as a very special case specifically on compassionate grounds. I am an ill woman and a mother of two kids.

Kindly give me a chance of hearing on any convenient date and time so that I should come to your office with all the record of my stay abroad and explain my position. Then whatever decision you make regarding my case but at least give me a chance to explain my position to you.

Thanking you in anticipation

Your Obediently

*[Handwritten Signature]*  
25.05.2015

Mrs. Ruhda Habib

Lecturer in Zoology

G.G.D.C Sheikh Maltoon Mardan

Copy to:

1. Secretary Education Government of Khyber Pakhtunkhwa Peshawar.
2. Personal file

**ATTESTED**

Annex-J  
P-19

The Secretary Higher Education  
Government of Khyber Pakhtunkhwa Peshawar

Subject: Request for taking of charge

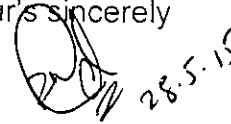
Respected Sir,

The Chief Secretary has been kind enough and assured us in person (while meeting him in his office), to grant me a chance of personal hearing regarding the ongoing disciplinary action against me, on a date to be communicated later on. A copy of the review application addressed to the Chief Secretary for personal hearing has already been submitted to your kind office vide your office no 1745 dated 27.05.2015.

As I have already submitted my arrival report/ joining to Director higher education on 15.05.2015 and also to your kind office on 19.05.2015. I request your honor to kindly issue orders allowing me to take charge of my duties.

Thanking you in anticipation

Your's sincerely



Mrs. Rushda Habib  
Lecturer in Zoology  
G.G.D. College Sheikh Maltun Mardan

Copy to:

1. Director Higher Education Government of Khyber Pakhtunkhwa Peshawar
2. Principal G.G.D.C Sheikh Maltoon Town Mardan
3. Personal file

Rushda  
28/5

secy HED  
2855  
28/5

ATTESTED

Annex-K  
P. 20

The Secretary Higher Education  
Government of Khyber Pakhtunkhwa Peshawar.

Subject: Request for maintaining statusquo in my case due to personal hearing with the honorable Chief Secretary

Respected Sir,

In a personal meeting with the honorable Chief Secretary, I have informed the Chief Secretary of my arrival back from Germany and that I have already submitted my arrival / joining to Director Higher Education dated 15-05-2015 (Arrival report already submitted to your office dated 19-05-2015).


The honorable Chief Secretary was kind enough in verbally assuring to grant me a chance of personal hearing on a date to be communicated within a week. My appeal application for personal hearing is under consideration at the Chief Secretary office. A Copy of the appeal for personal hearing addressed to the Chief Secretary has already been submitted to your kind office.

I therefore, request you to kindly stop any further action in my disciplinary action case till my person hearing with the Chief Secretary is over.

Thanking you in anticipation

Best Regards

Your Sincerely

  
01.06.2015  
Mrs. Rushda Habib  
Lecturer in Zoology  
G.G.D.College Sheikh Maftoon Mardan

Copy to:  
Personal file

**ATTESTED**





GOVERNMENT OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION, ARCHIVES &  
LIBRARIES DEPARTMENT

Annex-L  
P-21

Dated Peshawar, 04<sup>th</sup> June, 2015

**NOTIFICATION**

**No. SO(C-III)HE/1-2/09/Rushda Habib/.** The Competent Authority is pleased to remove Ms. Rushda Habib, Lecturer in Zoology (BPS-17), Govt. Girls Degree College, Sheikh Maltoon, Mardan from Government service with immediate effect due to her willful absence from duties. The absence period w.e.f 01-09-2013 ~~till date~~ may be treated as unauthorized absence from duty (without pay).

→ Wrong order  
I had already submitted my arrival to  
Director Higher Education dated 15.5.15 & 16.5.15  
& Secretary H.E dated 19.5.15

SECRETARY TO  
GOVT. OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION DEPARTMENT

**Endst: No. & Date Even**

Copy forwarded to the:-

1. Secretary Establishment & Administration Department, Khyber Pakhtunkhwa.
2. Director, Higher Education, Khyber Pakhtunkhwa Peshawar.
3. Principal, Govt. Girls Degree College, Sheikh Maltoon, Mardan.
4. District Accounts Officer, Mardan.
5. Lady Concerned,

**Postal Address:** Rushda Habib, D/O Habib Ur Rahman, House # R-239 Eid Gah Attock.

Section Officer (Colleges-III)

ATTACHED

Annex-M

P-22

Before the Honorable Chief Minister Government of Khyber Pakhtunkhwa Peshawar

Subject: APPEAL AGAINST THE NOTIFICATION NO. SO (C-III) HE/1-2/09/ RUSHDA HABIB Dated 04<sup>th</sup> June, 2015.

Respected Sir,

With due respect it is hereby stated I prefer to submit my appeal against the above notification on the following grounds.

Brief history of the Case:

I was working as lecturer of Zoology (BPS-17) at Sheikh Maltoon Girls Degree College Mardan. My Appointment was made through a Public Service Commission in the years 2005. I have 10 years of unblemished service in the Higher Education Department.

That my husband was doing his PhD in Climate Dynamics and Environmental Biology under the Government awarded Scholarship at the Georg- August- University of Göttingen Germany in the year 2011. I was granted ex-Pakistan leave (without pay) along with NOC by the Secretary Higher Education Government of Khyber Pakhtunkhwa w.e.f 01.09.2011 to 31.08.2013 vide NO. SO (FC) HE /1-2/09/Rushda Habib dated 11<sup>th</sup> October, 2011 and resultantly I moved to Germany to pursue studies in the field of my interest while staying with my Husband.

I thereafter got admission in the MS program of Göttingen University Germany, in the same faculty of Biodiversity and Ecology, where my husband was doing his PhD. I accordingly informed my department about my admission.

But during the course of my study, I came across some serious pregnancy complications and was hospitalized and passed through a surgery in Klinikum Hospital Göttingen Germany.

ATTESTED

Office of the PSCM

D. No: 1073

Date: 9/6

Received  
At  
9/07

Post birth complications increased coupled with Pancreatitis, partial failure of major alimentary canal organs along with the development of stones in my Gall bladder. The doctors advised me complete bed rest. After a long treatment, I again passed through another surgery and the Gall bladder was removed from my body. I was again advised by the doctors to take complete bed rest (Copy of the complete medical record is attached herewith).

I submitted my application for extension of leave up to June 2015 on the basis of the above grounds. In the meantime, my husband was at the verge of completing his PhD studies and I informed my department that after completion of studies we would return to Pakistan to resume our duties till June 2015. But I received no response in this regard from the concerned quarters. That as soon as I made some recovery in my health, I immediately rushed to proceed back to Pakistan to join my duty before my scheduled time. I came to Government Girls Degree College Sheikh Maltoon Mardan to submit my joining/ arrival report to the Principal of the College and the Director Higher Education on 15.05.2015 and 16.05.2015 (copy attached) respectively. But the Director Higher Education verbally informed me that disciplinary proceedings against you are underway. I thereafter rushed to the secretary Higher Education to submit my joining/arrival report on 19.05.2015 and my arrival report was accordingly accepted (Copy attached).

But 20 days after the acceptance of my joining, one of my relative telephonically informed me that I have been removed from service after which my husband rushed to the office of the Secretary Higher Education to know the facts of the case. The section officer colleges (females) handed over a copy of a short notification of my removal from service on 05.06.2015 (Copy attached).

### Grounds of Appeal

1. It is submitted that the major penalty of removal from service imposed upon me is in violation of the principal of natural justice. The major penalty of removal from service without following the due course of law is against all norms of justice and fair play and also in violation of the fundamental rights enshrined in the constitution of the Islamic republic of Pakistan.

ATTESTED

2. It is submitted that I have not been provided an opportunity to prove myself innocent as per law rather an ex parte decision has been made against me imposing the major penalty of removal from service. It is against the principle of justice because no one can be condemned as per law until proved otherwise. In the absence of personal hearing the said notification is liable to be set aside and be declared null and void.
3. It is submitted that the mentioned notification is against the law of the land. I have not been provided the opportunity to defend my case. I have neither received any Show Cause Notice/ Charge sheet/ level of allegations nor any correspondence in this regard.
4. It is also pertinent to submit here that I was not provided the opportunity of personal hearing before imposing the major penalty of Removal from Service. This is an utter violation of all norms of justice. It is an accepted and mandatory principle that no person can be punished unheard. Therefore the notification is against the rules.
5. It is submitted that the said notification is defective on all grounds. No cogent reasons have been given for imposing the major penalty. No relevant rules have been quoted accordingly. The said notification is therefore arbitrary, illegal, unlawful and based on malafied intentions as no inquiry whatsoever has been conducted and ex parte action has been taken against me.
6. That the major penalty has been imposed on the grounds of absence which was not intentional rather it was due to unavoidable circumstances beyond my control. The fact of the matter is that I did not remain absent willfully, but I could not move due to unavoidable medical grounds during which two major surgeries were made and the Gall bladder was completely removed from my body to save my life (Complete medical record attached).
7. That the period of my absence has also been treated as unauthorized absence from duty without pay. I therefore have been punished twice which is a double jeopardy and against the rules.
8. That the said notification is illogical and self-contradictory because on one hand it states that I am absent from duty till 4<sup>th</sup> June 2015 while on the other hand my arrival/joining of duty had already been accepted on 15<sup>th</sup>, 16<sup>th</sup> and 19<sup>th</sup> May, 2015 respectively (Copies of my joining/arrival report attached). My joining report had already been accepted 20 days prior to the said notification, which means that the imposition of major penalty is

ATTACHED

- unlawful, arbitrary, illegal and against the principles of justice and fair play. The fact of the matter is that I have been removed from service when I was on duty. It is simply nothing but sheer violation of service rules as well as gross violation of the fundamental rights enshrined in the constitution of the Islamic republic of Pakistan.
9. The said notification is therefore defective on all accounts and therefore may kindly be set aside in the interest of service.
  10. That the notification has been made in a very arbitrary manner and judicial mind has not been used in imposing a major penalty.
  11. It is respectfully prayed that the instant appeal may please be accepted and the notification order dated 04<sup>th</sup> June, 2015 may kindly be set aside and I may please be reinstated into service with all back/ consequential benefits.

I shall always pray for your long life

Your Obediently

*R. Habib* 8-6-15

Mrs. Ruhda Habib

Lecturer in Zoology

G.G.D.C Sheikh Maltoon Mardan

Copy to:

1. PS to Chief Secretary Government of Khyber Paktunkhwa Peshawar
2. PS to Secretary Establishment Government of Khyber Paktunkhwa Peshawar
3. PS to Secretary Education Government of Khyber Pakhtunkhwa Peshawar.
4. Director Higher Education Government of Khyber Pakhtunkhwa Peshawar.
5. Principal Government Girls Degree College Sheikh Maltoon Mardan
6. Personal file

**ATTESTED**

WAKALAT NAMA

IN THE COURT OF Khyber Pakhtunkhwa Service Tribunal, Peshawar

Mrs. Rushda Habib

Ex. Lecturer of Zoology - Appellant(s)/Petitioner(s)

VERSUS

The Chief Minister

Khyber Pakhtunkhwa & others. Respondent(s)

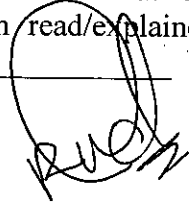
I/We Mrs. Rushda Habib do hereby appoint **Mr. Khush Dil Khan, Advocate Supreme Court of Pakistan** in the above mentioned case, to do all or any of the following acts, deeds and things.

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



**Khush Dil Khan,**  
Advocate,  
Supreme Court of Pakistan

Signature of Executants

9-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2213445

GP

2009 S C M R 1121

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J., Raja Fayyaz Ahmad and Ch. Ijaz Ahmed, JJ

ZIA-UR-REHMAN----Petitioner

Versus

DIVISIONAL SUPERINTENDENT, POSTAL SERVICES, ABBOTTABAD and others----  
Respondents

Civil Petition No.404 of 2009, decided on 22nd April, 2009.

(Against the judgment, dated 27-12-2008 passed by the Federal Service Tribunal, Islamabad, in Appeal No.20(P)(C.S.) of 2007)

(a) Civil service---

---Departmental appeal---Limitation---Appellate authority was justified to dismiss time-barred appeal.

(b) Civil service---

---Leave---Mere submission of application for leave by an employee to his department would not mean that leave has been granted in his favour, he is duty bound to enquire from the department himself about the fate of his request for grant of leave.

(c) Constitution of Pakistan (1973)---

---Art. 212(3)---Service Tribunals Act (LXX of 1973), S.4---Service Tribunal had given findings of fact against the petitioner after reappraisal of evidence and upheld the order of the department that his departmental appeal was time-barred, therefore, appeal before the Service Tribunal was not maintainable---Petitioner thus, had challenged the vires of the concurrent orders of the department and impugned judgment of the Service Tribunal through petition under Art.212(3) of the Constitution and had failed to raise any question of public importance---Validity---Supreme Court, held, could not interfere with the concurrent findings of fact arrived at by the courts below while exercising powers under Art.212(3) of the Constitution in circumstances---Principles.

Iftikhar Ahmed Malik's case 2005 SCMR 806; Tahir Latif's case 2007 SCMR 152; Ch. Muhammad Azim's case 1991 SCMR 255; Chairman PIA and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513 ref.

(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Appeal to Service Tribunal---Scope---Service Tribunal had no jurisdiction to convert the penalty, while observing that appellate authority dismissed the appeal of civil servant as time-barred.

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for

Petitioner.

Nemo for Respondents.

## ORDER

**CH. IJAZ AHMED, J.**---Zia-ur-Rehman, petitioner, seeks leave to appeal against impugned judgment, dated 27-12-2008 whereby the learned Federal Service Tribunal, Islamabad, has partly accepted his appeal by converting his dismissal into removal from service.

2. Detailed facts have already been mentioned in the impugned judgment, however, necessary facts out of which the present petition arises are that the petitioner was appointed as Postman (BS-5) on 9-3-1999 initially on daily wages basis. Subsequently he was regularized w.e.f. 1-8-2002. The petitioner absented himself from duty from 14-11-2005 to 13-10-2006. The competent authority sent show-cause notice on account of his absence on 1-2-2006 which was received back to the competent authority/respondent with the remarks that the addressee was not available at the given address. Subsequently show-cause notice was published in the press on 16-2-2006. The petitioner did not enter appearance in response to the show-cause notice before the competent authority. Disciplinary proceedings were finalized ex parte against the petitioner and he was dismissed from service vide order dated 29-5-2006. Order of dismissal was again sent on his permanent address which was also received back. The same was also published in the press on 24-7-2006 but the petitioner did not respond and did not file departmental appeal against the dismissal order within the prescribed period. The petitioner filed departmental appeal before the appellate authority on 7-12-2006 which was rejected as time-barred vide order, dated 24-1-2007. Petitioner, being aggrieved, filed Service Appeal No.20(P)(C.S.) of 2007 on 12-2-2007 before the Federal Service Tribunal. The Service Tribunal partly accepted the same vide impugned judgment, dated 27-12-2008, hence the present petition.

3. Learned counsel for the petitioner submits that the petitioner was involved in a criminal case which was registered under sections 10/16, Offence of Zina Ordinance, 1979 and under section 365, P.P.C. the petitioner was arrested in the said case. He further urges that petitioner had submitted an application for leave to the Divisional Superintendent on 14-11-2005 which, according to him, was not forwarded to the competent authority, therefore, he was treated to be unauthorisedly absent from office. The petitioner was released on bail in the said criminal case on 11-10-2006. Thereafter the petitioner reported for duty on 13-10-2006 when he had received information orally that he was dismissed from service. The petitioner received the dismissal order, dated 29-5-2006 on 26-11-2007 and this aspect of the case was not considered in its true perspective by the learned Service Tribunal as well as the respondents. He further maintains that it is the duty and obligation of the respondents to decide the application of the petitioner with reasons in view of section 24-A of General Clauses Act, 1897. He further urges that learned Service Tribunal had erred in law to non-suit the petitioner on technical ground without application of mind.

4. We have given our anxious consideration to the contentions of the learned counsel of the petitioner and had perused the record with his able assistance. The respondents had taken a stand in comments filed before the Service Tribunal that petitioner had not submitted application for leave and the petitioner was dismissed from service on account of wilful absence and misappropriation of Government money with mala fide intention. The petitioner had also taken a stand in para.6 of the appeal before the Service Tribunal that local Postmaster, Changala Gali, in collusion with the complainant Feroze had not submitted the application of the petitioner to the authority concerned. It is appropriate and proper to reproduce basic facts



in chronological order to resolve the controversy in question as under:---

- (i) Show-cause notice was issued and dispatched on his permanent address on 1-2-2006.
- (ii) The said notice was received back in office on 17-1-2006.
- (iii) Show-cause notice was also published in the Daily Jang, Rawalpindi and Daily Ittehad, Abbottabad, dated 16-1-2006.
- (iv) The petitioner failed to defend himself.
- (vi) The petitioner was dismissed from service vide order, dated 29-5-2006.
- (vii) Dismissal order was also dispatched on his permanent address which was received back in the office on 1-6-2006.
- (viii) The said dismissal order was also published in the Daily Jang, Rawalpindi, and the Daily Shamal, Abbottabad dated 24-7-2006.
- (ix) It is pertinent to mention here that the respondents had taken the aforesaid stand in reply to para.8.
- (x) The petitioner did not deny the same in the specific words while filing rejoinder before the Federal Service Tribunal.
- (xi) The petitioner filed departmental appeal on 7-12-2006 which was time-barred and was rejected vide order, dated 24-1-2007 in the following terms:--

"It is intimated that appeal is time-barred. Therefore, cannot consider at this stage"

- (xii) The petitioner filed appeal before the Service Tribunal on 12-2-2007 which decided vide impugned judgment, dated 27-12-2008. The learned Service Tribunal had given finding in para.7 as under:---

"As per settled law, since the departmental appeal is time-barred, the instant appeal is not competent before this Tribunal."

5. In case the foresaid facts are put in juxta position then it is crystal clear that the petitioner had filed departmental appeal after the prescribed period, therefore, the appellate authority was justified to dismiss the same as time-barred. The petitioner admits his absence from duty on account of his involvement in criminal case but he failed to substantiate the same by producing a convincing evidence to the extent that he had submitted an application for leave before the respondents. Even otherwise it is well-settled principle of law that mere submission of application for leave by an employee to his department would not mean that leave has been granted in his favour and he is duty bound to enquire from the department himself about the fate of his request for grant of leave. In the case in hand, the petitioner did not even bother to contact his department himself or through his agent to know as to whether leave has been sanctioned or not. Mere reading of the paragraph 7 of the impugned judgment clearly shows that learned Service Tribunal had given findings of fact against the petitioner after reappraisal of evidence and upheld the order of the respondents that his departmental appeal was time-barred, therefore, appeal before the Service Tribunal was not maintainable, meaning thereby, that the petitioner had challenged the vires of the concurrent orders of the respondents

and impugned judgment of the Tribunal through this petition. This Court cannot interfere with the concurrent findings of fact arrived at by the Courts below while exercising the power under Article 212(3) of the Constitution as laid down by this Court in Iftikhar Ahmed Malik's case 2005 SCMR 806 and Tahir Latif's case 2007 SCMR 152. It is settled principle of law that finding of Service Tribunal having findings of fact would not call for interference by this Court as law laid down by this Court in Ch. Muhammad Azim's case 1991 SCMR 255. It is settled principle of law that when appeal of the employee was time-barred before the appellate authority then the appeal before the Tribunal was also not competent on that count in view of the various pronouncements of this Court including the following judgments:---

(1) Chairman PIA and others v. Nasim Malik PLD 1990 SC 951 (2) Muhammad Aslam v. WAPDA and others 2007 SCMR 513.

Even otherwise the petitioner has failed to raise any question of public importance in the present case as contemplated under Article 212(3) of the Constitution.

6. It is pertinent to mention here that learned Service Tribunal has converted the penalty of dismissal into removal on sympathetic grounds keeping in view young age of the petitioner as is evident from paras.8 and 9 of the impugned judgment. As the respondent had not filed petition qua the said conversion of punishment before his Court, therefore, we do not disturb the same, otherwise, learned Service Tribunal has no jurisdiction to convert the penalty while observing that appellate authority dismissed the appeal of the petitioner as time-barred, hence, appeal before the Service Tribunal was not competent.

7. In view of what has been discussed above, we do not find any merit in this petition and the same is dismissed. Leave refused.

M.B.A./Z-2/SC

Petition dismissed.

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

**Service Appeal No. 1015/2015**


Ms. Rushda Habib..... Appellant

VERSUS

Secretary Higher Education & others..... Respondents.

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Respondents 30/3/2016

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

**Service Appeal No. 1015/2015**

Ms. Rushda Habib..... Appellant

VERSUS

Secretary Higher Education & others..... Respondents.

**PRELIMINARY OBJECTIONS:-**

Respectfully Sheweth:-

1. That the appellant has got no locus standi/ cause of action to file the instant appeal.
2. That the appeal in hand is badly time barred.
3. That the Hon'able Tribunal lacks jurisdiction to entertain the instant appeal.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the appellant has concealed material facts from the Hon'able Tribunal.

**REPLY ON FACTS:-**

1. Pertains to record. Need no comments.
2. Pertains to record.
3. Correct to the extent that appellant applied for extension of leave for higher studies but as per rules the appellant was required to obtain NOC for studying abroad which she did not do so. Furthermore, the appellant application for extension of leave from 1/9/15 was regretted and she was informed through several letters to resume her duties (Annexure-A, B).
4. Incorrect. As the appellant application for extension of leave was regretted, therefore, she was informed through several letters (Annexure C, D, E, F) to resume duty. Moreover, she did not apply to obtain NOC for higher studies in abroad. Furthermore, the appellant has not submitted any application for medical leave.
5. Incorrect. The appellant has not submitted any application for medical leave. The appellant was informed through several letters and notices to resume duties but the appellant paid no heed. The Competent Authority after fulfilling all the formalities of publication of absence notices (Annexure- G, H, I), removed the appellant for willful absence from her duty from 01/09/2013 to 04/06/2015 (Annexure-J). Therefore, her arrival report after lapse of time was not accepted.
6. Incorrect. The appellant was informed through several notices to resume duty as mentioned in preceding paras but she did not bothered to reply nor appeared in person. As far as her applications are concerned they were time barred.
7. Incorrect. The competent authority, after fulfilling all codal/legal formalities, removed the appellant on the basis of her willful absence from duty.


29


**ON GROUNDS**

- a) Not admissible, the appellant was required to show cause for her absence from duty which she failed within reasonable time.
- b) Incorrect. The appellant remained absent from duty, despite of the fact that her application for extension of leave was regretted. Furthermore, her arrival report was not accepted due to lapse of time. She was required to be appeared in person within 15 days after the publication of absence notice in newspaper but she failed to do so. Therefore, her arrival report, dated 16/05/2015 was time barred.
- c) Not admissible. All legal/ codal formalities have been fulfilled by the competent authority.
- d) Incorrect. The appellant is trying to conceal material facts from the Hon'able Tribunal as the appellant was informed properly through several notices for resumption of duty but she failed to reply nor appeared in person.
- e) Incorrect. As far as her arrival report is concerned it was not accepted due to lapse of reasonable time. Furthermore, the competent authority is justified in taking disciplinary action against the appellant for her willful absence from duty.
- f) Incorrect. The appellant remained absent from 01/09/2013 till 04/06/2015 without any sanctioned leave and despite of several notices, she failed to explain her position, therefore, she was rightly removed from service according to E&D Rules.
- g) Incorrect. The removal order was passed according to E&D Rules i.e. removal from service for willful absence. No right has been violated.
- h) Incorrect. The departmental appeal of the appellant was regretted due to her failure to appear within reasonable time. The appellant was rightly removed from service according to E&D rules (Annexure-K).

**PRAYERS:-**

It is therefore, humbly prayed that the appeal is not maintainable as it is based on misconception hence the appeal may graciously be dismissed.

  
Secretary Higher Education Department  
Khyber Pakhtunkhwa Respondent No.1

  
for Director Higher Education  
Khyber Pakhtunkhwa, Peshawar Respondent No.2

  
**CHIEF SECRETARY**

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

**Service Appeal No. 1015/2015**

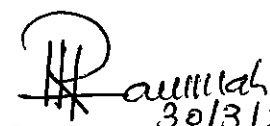
Ms. Rushda Habib..... Appellant

VERSUS

Secretary Higher Education & others.....Respondents.

**AFFIDAVIT**

I Irfan Ullah khan Assistant Director Litigation Higher Education Department do hereby declare and affirm on oath that the contents of Para Wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.

  
Deponent 30/3/2016

CNIC No.11101-6409112-3

Identify by

Annen / B A

450

Office of the Principal  
GGDC Sheikh Maltoon Mardan  
No 307 Dated 2/8/13

To  
Mrs. Rushda Habib  
Lecturer in Zoology  
GGDC Sheikh Maltoon Mardan.

(i) Rushda Habib R-239 Eid Gah, Attock.  
Permanent Address: Rushda Habib w/o Ferooz Jan Village Sardheri Dist.  
Charsadda

Subject: Report for duty/ Extension on Ex-Pakistan leave w.e.f 01/9/2013 to 31/12/2013

Memo:

Reference Director of Higher Education KPK office self-explanatory letter bearing No. 15584/CA-II/Estt:Branch/A-12/Rushda Habib/Zoology dated 20/8/2013 regarding the subject matter ( attached herewith for strict compliance ).

You are directed to report for duty within 15 days of the receipt of this letter failing which disciplinary action under the relevant rules will be initiated against you by the competent authority.

*SP.*  
Principal  
GGDC Sheikh Maltoon  
Mardan

Endst: No 308

Copy to the:

1. Director of Higher Education Khyber Pakhtunkhwa Peshawar with reference to his office No. noted above with the remarks that the extension of leave application has not been forwarded from this office ( copy of letter in this connection issued by this office is attached for your perusal and further necessary action please.

*SP.*  
Principal  
GGDC Sheikh Maltoon  
Mardan

Annex A<sub>1</sub>

5

**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.**

**PHONE #091-9211025, 9211803, 9213009, 9210242 FAX # 091-9210215**

NO. 25035 /CA-V/Estt: Branch/A-12/Ms Rashda Habib/ Zoology Dated Peshawar, the 24/10/2014

To

Ms. Rushda Habib  
Lecturer in Zoology,  
D/O Habib Ur Rehman  
House No R-239 Eid Gah Attock.

Subject: **EXTENSION IN EX- PAKISTAN LEAVE W.E.F 01-06-2015.**

Memo:

I am directed to refer to your letter dated 12/09/2014 on the subject noted above and ask you to provide copy of NOC for higher studies.

*o/c* *Rubi*  
DY. DIRECTOR (FEMALE)

Endst: No. 25036

Copy of the above is forwarded to the Principal Govt: Girls Degree College, Sheikh Maltoon, Mardan to direct the lady concerned accordingly.

*o/c* *Rubi*  
DY. DIRECTOR (FEMALE)



Amren B

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Office of the Principal  
GGDC Sheikh Maltoon Mardan  
No \_\_\_\_\_ dated 21/10/2013.

To  
Ms. Rushda Habib  
Lecturer in Zoology  
GGDC Sheikh Maltoon Mardan.

Permanent Address: Rushda Habib R-239 Eid Gah Attock.

Subject: Report for duty/Extension of Ex-Pakistan leave w.e.f 01/09/2013 to 31/12/2013

Memo:

Reference this Office No.307 dated 2/9/2013 (Copy enclosed) where in you were directed to report for duty with in 15 days of the receipt of the aforesaid letter.

However, despite the lapse of the stipulated period, you have failed to attend this college for your official duty. You have neither made any contact except your extension of Ex-Pakistan leave application dated 22/8/2013 (Copy attached).

It is once again reminded that the Director Higher Education Khyber Pakhtunkhwa Peshawar vide his office letter bearing No. 15584 dated 20/8/2013 (already intimated to you ) has turned down your extension of Ex-Pakistan leave application on grounds mentioned therein.

You are therefore, once again directed to immediately report for duty in your own interest , failing which disciplinary action will be initiated against you through competent authority.

*Sd-*  
Principal  
GGDC Sheikh Maltoon  
Mardan.

*R-46*

Endst:No 356  
Copy for information to the:

Director Higher Education Khyber Pakhtunkhwa Peshawar w/r to his Office No.15584 dated 20/8/2013.

*Jawaf Begum*  
Principal  
GGDC Sheikh Maltoon  
Mardan.

*DDF*  
RECEIVED ON  
7/10/2013  
7077-257

*FUP*

Tel: 091-9213716  
Ext: 110  
Fax #: 091-9210368

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION, ARCHIVES &  
LIBRARIES DEPARTMENT



No.SO(C-III) HE/1-2/09/Rushda Habib/1262-63  
Dated: Peshawar: 13-03-2014

To

Ms. Rushda Habib,  
Lecturer in Zoology Govt. Girls Degree College,  
Sheikh Maltoon Mardan

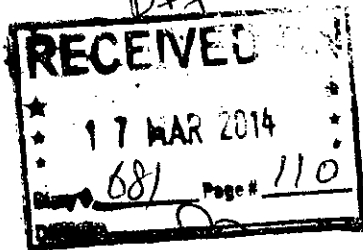
Subject: **Extension in Ex-Pakistan Leave w.e.f. 01-09-2013 to 31-12-2015**

I am directed to refer to your application dated 19-09-2013 on the subject noted above and to state that your case for extension of two years Ex-Pakistan leave (without pay) was sent to Finance Department and regrets its inability to accede the request of this department.

SECTION OFFICER (C-III)

**Endst: No. & Date of Even**

Copy of the above is forwarded to Directorate of Higher Education Peshawar for information with the request to inform lady officer on home address. If she fails to report for duty, then disciplinary action may be initiated against the officer.



SECTION OFFICER (C-III)

Attention Section Officer (E-III) <sup>Amner D</sup>

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Registered

**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.**

PHONE #091-9211025, 9211803, 9213009, 9210242 FAX # 091-9210215

NO. 14514 /CA-V/Estt: Branch/A-12/Ms.Rushda Habib/zoology

Dated Peshawar, the 27/6 /2014

To

Ms.Rushda Habib  
Lecturer in Zoology  
D/o Habib Ur Rahman, House # R-239 Eid gah Attock,

Subject: **EXTENSION IN EX-PAKISTAN LEAVE W.E.F 1/9/2013 TO 31/12/2015**

I am directed to refer to the Provincial Govt: letter No. Section Officer (Colleges- III) HE/1-2/09/Rushda Habib dated 13-03-2014 wherein he stated that your case for extension of two years Ex- Pakistan leave (without pay) was sent to Finance Department & regrets its inability to accede the request of this Department.

You are hereby directed to assume your duty within 10-days after receipt of this letter, failing which disciplinary action will be initiated against you under E & D Rules, 2011.

14515-16 <sup>Rubia</sup>  
DY.DIRECTOR ESTABLISHMENT (F)

Endst: No. \_\_\_\_\_

Copy of the above is forwarded to the:

- 1). Section Officer (Colleges-III) Higher Education Department w/r to your letter No. and dated noted above.
- 2). Principal Govt Girls Degree College Shaikh Maltoon (Mardan) for necessary action.

el <sup>Rubia</sup>  
DY.DIRECTOR ESTABLISHMENT (F)

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Reminder-1  
Registered

**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.**  
PHONE #091-9211025, 9211803, 9213009, 9210242 FAX # 091-9210215

NO. 18573 /CA-V/Estt: Branch/A-12/Ms.Rushda Habib/zoology Dated Peshawar, the 21/9/14 2014

To

Ms.Rushda Habib  
Lecturer in Zoology  
D/o Habib Ur Rahman, House # R-239 Eid gah Attock,

Subject: **EXTENSION IN EX-PAKISTAN LEAVE W.E.F 1/9/2013 TO 31/12/2015**

I am directed to refer to this office letter No. 14514 dated 27-06-2014 and the Provincial Govt: letter No. Section Officer (Colleges- III) HE/1-2/09/Rushda Habib dated 13-03-2014 wherein he stated that your case for extension of two years Ex- Pakistan leave (without pay) was sent to Finance Department & regrets its inability to accede the request of this Department.

You are hereby again directed to assume your duty within 10-days after receipt of this letter, failing which disciplinary action will be initiated against you under E &D Rules, 2011.

*Rubia*  
DY.DIRECTOR ESTABLISHMENT (F)

Endst: No. 18574-75

Copy of the above is forwarded to the:

- 1). Section Officer (Colleges-III) Higher Education Department w/r to your letter No. and dated noted above.
- 2). Principal Govt Girls Degree College Shaikh Maltoon (Mardan) for necessary action.

*ole*  
DY.DIRECTOR ESTABLISHMENT (F)

Annex E

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Office of the Principal  
GGDC Sheikh Maltoon Mardan  
No. \_\_\_\_\_ Dated 16/9/2014

To  
Ms. Rushda Habib  
Lecturer in Zoology  
D/O Habib Ur Rehman, House # R-239 Eid Gah Attock.

Subject: Extension in Ex-Pakistan leave w.e.f 1/9/2013 to 31/12/2015.

Memo:  
Reference Directorate of Higher Education Khyber Pakhtunkhwa Peshawar No. 18573/CA-V/Instt/Branch/A-12/Ms. Rushda Habib/Zoology dated 2/9/2014 addressed to you and copy thereof endorsed to this office.

As per directives contained in para No.2 of the aforesaid memorandum, you are directed to immediately resume your duty at this college.

- Sd.  
Principal  
GGDC Sheikh Maltoon  
Mardan

Endst: No 293-94  
Copy to the:  
1. SO ( Colleges-III ) Higher Education Department Civil Secretariat Peshawar.  
2. Director Higher Education Khyber Pakhtunkhwa Peshawar.

Zauwal Begum  
Principal  
GGDC Sheikh Maltoon  
Mardan

DDF

RECEIVED ON  
★  
★ 25 SEP 2014 ★  
Diary # 1044 Page # 152  
D/Clerk

**ABSENCE NOTICE.**

You Ms. Rushda Habib, lecturer in Zoology, Govt: Girls Degree College Sheikh Maltoon,( Mardan) were granted Ex-Pakistan leave (without pay ) w.e.f 01-09-2011 to 31-08-2013, You applied for extension in Ex-Pakistan leave (without Pay) for further 2-years w.e.f 01-09-2013 to 31-12-2015 but your request was not acceded to by the Competent Authority and you were informed accordingly on your available addresses vide Director Higher Education Khyber Pakhtunkhwa letter No.1175 dated 23-05-2014 and letter No. 14514 dated 27-06- 2014 with the direction to report for duty within 10-days otherwise disciplinary action will be taken against you under E & D Rule, 2011, but you failed to do so.

You are hereby directed in your own interest through this absence notice to report for duty within 15-days of the publication of this notice and explain the reason of your willful absence from duties, failing which it will be presumed that you are not interested in continuing your service and Ex-Parte action under E & D Rules, 2011 will be taken against you, culminating in your dismissal from service.

  
SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION DEPARTMENT

Jan 7/2015

### ABSENCE NOTICE

You Ms. Rushda Habib, lecturer in Zoology, Govt. Girls Degree College Shalkh Malloon (Mardan) were granted Ex-Pakistan leave (without pay) w.e.f 01-09-2011 to 31-09-2013. you applied for extension in Ex-Pakistan leave (without Pay) for further 2-years w.e.f 01-09-2013 to 31-12-2015 but your request was not acceded to by the competent Authority and you were informed accordingly on your available addresses vide Director Higher Education Khyber Pakhtunkhwa letter No. 1175 dated 23-05-2014 and letter No. 14514 dated 27-06-2014 with the direction to report for duty within 10 days otherwise disciplinary action will be taken against you under E&D Rule, 2011, but you failed to do so. You are hereby directed in your own interest through this absence notice to report for duty within 15 days of the publication of this notice and explain the reason of your willful absence from duties, failing which it will be presumed that you are not interested in continuing your service and Ex-parte action under E&D Rules, 2011 will be taken against you culminating in your dismissal from service.

**SECRETARY**  
 Government of Khyber Pakhtunkhwa  
 Higher Education Department  
 (NEP, 1995) Also available on [www.khyberpakhtunkhwa.gov.pk](http://www.khyberpakhtunkhwa.gov.pk)

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# ABSENCE NOTICE

You Ms. Rushda Habib, lecturer in Zoology, Govt. Girls Degree College Sheikh Maltoon, (Mardan) were granted Ex-Pakistan leave (without pay) w.e.f 01-09-2011 to 31-08-2013, you applied for extension in Ex-Pakistan leave (without Pay) for further 2-years w.e.f 01-09-2013 to 31-12-2015 but your request was not acceded to by the competent Authority, and you were informed accordingly on your available addresses vide Director Higher Education Khyber Pakhtunkhwa letter No. 1175 dated 23-05-2014 and letter No. 4514 dated 27-06-2014 with the direction to report for duty within 10 days otherwise disciplinary action will be taken against you under E&D Rule, 2011 but you failed to do so. You are hereby directed in your own interest through this absence notice to report for duty within 15 days of the publication of this notice and explain the reason of your willful absence from duties, failing which it will be presumed that you are not interested in continuing your service and Ex-parte action under E & D Rules, 2011 will be taken against you culminating in your dismissal from service.

**SECRETARY**  
 Government of Khyber Pakhtunkhwa  
 Higher Education Department

Also available on [www.khyberpakhtunkhwa.gov.pk](http://www.khyberpakhtunkhwa.gov.pk)

شماره دستاویز آمارہ اسلام آباد کراچی سے یک وقت شائع ہو گا اکثر اشاعت ہوتی رہے گا

وزیر تعلیم و کمالیہ

روزنامہ

پشاور  
 پاکستان

عبدالواحد پوری

شمارت 12

جلد 26 / 23 ستمبر 2015 / 3 جمادی الاول 1436 / 12

E:/DDF/Documents-06 PTM etc. Issue

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02-03-2039

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Annex I

27 فروری 2015

روزنامہ مشرق شادرا اسلام آباد 14

Ph: 091-9214215, 9222502

Address: House # 01, Near Rescue 1122 Mani Office,  
Tariq Road, Peshawar Cantt, Peshawar.

InfoKPOvt

@InfoKPOvt

www.infokhyberpakhtunkhwa.gov.pk

Send KP to 8333

INF(P) 705

## ABSENCE NOTICE

You Ms. Rushda Habib, lecturer in Zoology, Govt: Girls Degree College Sheikh Maltoon, (Mardan) were granted Ex-Pakistan leave (without pay) w.e.f 01-09-2011 to 31-08-2013, you applied for extension in Ex-Pakistan leave (without Pay) for further 2-years w.e.f 01-09-2013 to 31-12-2015 but your request was not acceded to by the competent Authority and you were informed accordingly on your available addresses vide Director Higher Education Khyber Pakhtunkhwa letter No.1175 dated 23-05-2014 and letter No 14514 dated 27-06-2014 with the direction to report for duty within 10 days otherwise disciplinary action will be taken against you under E& D Rule, 2011, but you failed to do so. You are hereby directed in your own interest through this absence notice to report for duty within 15-days of the publication of this notice and explain the reason of your willful absence from duties, failing which it will be presumed that you are not interested in continuing your service and Ex-parte action under E& D Rules, 2011 will be taken against you, culminating in your dismissal from service.

**SECRETARY**

Government of Khyber Pakhtunkhwa  
Higher Education Department

INF(P) 1005 Also available on [www.khyberpakhtunkhwa.gov.pk](http://www.khyberpakhtunkhwa.gov.pk)



Annex 3

GOVERNMENT OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION, ARCHIVES &  
LIBRARIES DEPARTMENT

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Dated Peshawar, 04<sup>th</sup> June, 2015.

**NOTIFICATION**

**No. SO(C-III)HE/1-2/09/Rushda Habib/** <sup>2140-44</sup> The Competent Authority is pleased to remove Ms. Rushda Habib, Lecturer in Zoology (BPS-17), Govt. Girls Degree Collège, Sheikh Maltoon, Mardan from Government service with immediate effect due to her willful absence from duties. The absence period w.e.f 01-09-2013 till date may be treated as unauthorized absence from duty (without pay).

SECRETARY TO  
GOVT. OF KHYBER PAKHTUNKHWA  
HIGHER EDUCATION DEPARTMENT

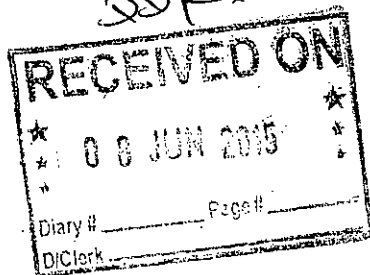
**Endst: No. & Date Even**

Copy forwarded to the:-

1. Secretary Establishment & Administration Department, Khyber Pakhtunkhwa.
2. Director, Higher Education, Khyber Pakhtunkhwa Peshawar.
3. Principal, Govt. Girls Degree College, Sheikh Maltoon, Mardan.
4. District Accounts Officer, Mardan.
5. Lady Concerned,

**Postal Address:** Rushda Habib, D/O Habib Ur Rahman, House # R-239 Eid Gah Attock.

Section Officer (Colleges-III)



Annex k

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**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.  
PHONE #091-9211025, 9211803, 9213009, 9210242 FAX # 091-9210215**

NO. 24676 /CA-V/Estt: Branch/A-12/Ms.Rushda Habib/Zoology

Dated Peshawar, the 30/8/15 2015

To

The Special Secretary,  
Govt: of Khyber Pakhtunkhwa,  
Higher Education Department,  
Peshawar.

Subject: **APPEAL AGAINST THE NOTIFICATION NO.SO(C-III)/HE/  
1-2/09/RUSHDA HABIB DATED 04<sup>TH</sup> JUNE 2015.**

R/Sir,

I am directed to refer to your letter No.SO(C-III)/HE/1-2/09/Rushda Habib/1044 dated 19.08.2015 on the subject cited above and to submit the Para-wise comments on the appeal of Ms.Rushda Habib Ex-Lecturer in Zoology GGDC, Sheikh Maltoon Mardan.

**Facts :-**

Consequent upon the recommendation of Public Service Commission the lady officer was appointed as lecturer in Zoology vide Provincial Govt. Notification No.SO (FC) HE/1-2/08 (Vol-IV)/Recruitment dated 27.05.2008. The Principal GGDC, Sheikh Maltoon Mardan forwarded her request for grant of Extra ordinary leave (without pay) for 02 years w.e.f 01.09.2011 to 31.08.2013 vide letter No.275 dated 13.09.2011. Her request for grant of Ex-Pakistan leave was honored by Competent Authority vide Notification No.SO (FC) HE/1-2/09/Rushda Habib dated 11.10.2011. The lady requested for extension in Ex-Pakistan leave w.e.f. 01/09/2013 to 31/12/2015. Her request was regretted and the Principal was asked to inform the lady accordingly vide letter No. 15584 dated 20-08-2013 (Copy enclosed).

GROUND OF DEPARTMENTAL APPEAL.

- 1) She remained absent from duty for long time: Her request for extension in Ex-Pakistan leave w.e.f. 1/9/2013 to 31/12/2015 was sent to Provincial Government vide letter No. 24047 dated 28-11-2013(Copy enclosed) with factual position and the same was again regretted by finance Department. The lady was directed by Section Officer(C-III) to report for duty and if she fails to report for duty, then disciplinary action may be initiated against her vide letter No.SO(C-III) HE/1-2/09/Rushda Habib/1262-63 dated 13-03-2014 (copy enclosed). Number of letters was issued by the Principal concerned at her available address with the instruction to report for duty but she failed to do. She was removed from service by following step wise procedure without violating any law, norms of justice and fundamental rights given in the constitution of Pakistan.
- 2) Absence Notice was issued in two daily Newspapers i.e. Aaj & Mashriq on 23.02.2015 & 27/02/2015 respectively (copy enclosed) wherein she was directed to report for duty within 15 days and explain the reason of her willful absence from duties, failing which Ex-parte action under E & D rule, 2011 will be taken against her. The absence case was forwarded to Provincial Government after lapse of one and half month on 16-04-2015 hence her claim that opportunity has not been provided to prove herself innocent is proved false.
- 3) Opportunity was provided to defend her case (as mentioned in para-02) but she did not avail that opportunity or benefited herself from the opportunity concerned to prove herself innocent. Correspondence has also been made several time on her available address vide this office letter No.1175, 14514 & 18573 dated 23.05.2014, 27.6.2014 & 02.09.2014 (copy enclosed). The Principal GGDC, Sheikh Maltoon also issued several letter on her home address with the direction to report for duty.
- 4) Justification of Para-4 is provided in para-2 & 3.
- 5) Absentee for long time without approval of Competent Authority is the cogent reason for composing the major penalty.
- 6) According to her she was suffering from multiple medical problems that's why she remained absent. This office was unaware of her health problem. Being Govt. employee she was bound to proceed her medical leave case well in time. However she forwarded medical leave case to this office when absence notice was sent to Provincial Govt. for further necessary action (Removal from service).
- 7) Her absence was treated as unauthorized absence from duty without pay as her request for Extension in Ex-Pakistan leave was not acceded by competent authority and she was directed to report for duty through various letters as mentioned in para-03.
- 8) Arrival report was received to this office on 15.05.2015 and was forwarded to Provincial Govt. vide letter No.12659 dated 22.05.2015. Her arrival report was not

accepted by Principal concerned hence her claims that she was removed from service when she was on duty. Proved false / baseless.

- 9) Not admitted: The order dated 04.06.2015 is issued by following step-wise procedure hence, not liable to be set aside.
- 10) All legal procedure under E & D rule 2011 was fully observed.
- 11) Not admitted. The appellant has rightly been penalized for irresponsible attitude. Hence not liable to be set aside.

*ofc* <sup>*Rubia*</sup> DY. DIRECTOR (FEMALE)

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. 10151 of 2015

K. W. P. Province  
Service Tribunal

Slary No. 1068

Dated 14/9/2015

Mrs. Rushda Habib,  
Ex-Lecturer in Zoology  
Government Girls Degree College  
Sheikh Maltoon, Mardan  
Higher Education Department  
Khyber Pakhtunkhwa, Peshawar...

Appellant

VERSUS

1. The Chief Minister,  
Province of Khyber Pakhtunkhwa,  
Chief Ministers' Secretariat, Peshawar.
2. The Chief Secretary,  
Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.
3. The Secretary,  
Government of Khyber Pakhtunkhwa,  
Higher Education Department,  
Civil Secretariat, Peshawar.
4. Director of Higher Education,  
Directorate of Higher Education  
Khyber Pakhtunkhwa, Peshawar...

Respondents

APPEAL UNDER SECTION 4 OF KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT,  
1974 AGAINST THE IMPUGNED ORDER  
DATED 4.6.2015 THEREBY APPELLANT WAS  
REMOVED FROM SERVICE WITH IMMEDIATE  
EFFECT FOR THE REASON OF HER ALLEGED  
ABSENCE FROM DUTY AGAINST WHICH SHE  
FILED DEPARTMENTAL APPEAL ON 9.6.2015  
BEFORE THE RESPONDENT No. 1 UNDER

Filed to the

5-10-2015

S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	20.07.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO. 1015/2015</p> <p style="text-align: center;">(Rushda Habib-vs- Chief Minister, Province of Khyber Pakhtunkhwa, Chief Ministers Secretariat, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p>Appellant with counsel (Mr. Khushdil Khan, Advocate) and Mr. Ziaullah, GP for respondents present.</p> <p>2. Appointed on 27.05.2005 in the Education Department of Khyber Pakhtunkhwa, the appellant was stated to be a lecturer of Zoology in the GGDC Sheikh Maltoon Mardan. Extra Ordinary Leave was granted to the appellant for two years w.e.f 01.09.2011 to 31.08.2013. Her second application for extension in leave for two years was regretted by the respondents vide their order dated 02.09.2014 and she was directed to resume duty within ten days of the receipt of the above letter otherwise she will be proceeded against under Khyber Pakhtunkhwa Civil Servants (E&amp;D)Rules 2011. She did not timely put in appearance and was proceeded against. Consequently vide impugned order dated 04.06.2015, the appellant was removed from service with immediate effect on the ground of her willful absence from duty. Her departmental appeal dated 08.06.2015 is stated to have not yet been decided, hence this appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p>

3. Arguments heard and record perused.

4. Learned counsel for the appellant while narrating facts of the case stated that one Farooq Jan, a Lecturer in the Abdul Wali Khan University, Mardan is the husband of the appellant who was sent by Abdul Wali Khan University, Mardan to Germany for PHD. The appellant was also abroad with her husband. She, in order to improve her own education got enrolment in Germany. Besides that, she also fell ill and underwent a surgery. When got well, she returned to Pakistan, and put in arrival report but she also came to know that the disciplinary proceedings against her were in the final stages. That she also knocked doors of the higher authorities but in vain. On legal side the learned counsel for the appellant argued that under Rule-12 of the Civil Servants Revised Leave Rules 1981, the appellant had a right of extra ordinary leave for a period up to five years. His second submission is that when she put in appearance and submitted arrival report to the Director Higher Education on 16.05.2015, she should not have been removed from service under Rule-09 of the E&D Rules-2011. He also took the plea that the requirements of service of notices through registered post as provided under Section-26 of the General Clauses Act were not fulfilled nor citation of the notice in the Daily Mashriq and Daily AJJ can be counted as publication in the leading news paper. The learned counsel for the appellant further argued that extension in extra ordinary leave was arbitrarily, unjustly and unjustly regretted by the respondents. He also submitted that opportunity of defense and personal hearing has not been provided to the appellant and thus the appellant has been wrongly and whimsically removed from service. He requested that the appellant may be reinstated into service with all back benefits.



5. This appeal was resisted by learned Government Pleader on behalf of the Government by submitting that in pursuance of provision of Rule-09,(ibid) the appellant was duly issued notices at her home address followed by citation in the two daily news papers Daily Mashriq and Daily AJJ which are the leading news papers of the country. He also submitted that the absence was quite willful as the appellant fully knew that her application for extension for leave has not been allowed and in order to avoid disciplinary proceedings she had been asked to report for duty within ten days. In this respect he referred the admission of the appellant made in her application dated 12.09.2014 addressed to the Principal of GGDC Sheikh Maltoon Mardan, copy of which is available on record. He further argued that grant of leave is not a vested right of the civil servant but under Section-22 of the Civil Servant Act, 1973, the same falls in the discretion of the competent authority. He denied that refusal in extension in leave was arbitrary or whimsical decision. He also argued that absence of the appellant was willful and she was rightly proceeded under Rule-9 of the E&D Ruls-2011 after observing all the codal formalities. He submitted that the appeal may be dismissed. On support of his contentions, he referred to 2011 PLC (C.S)990, 2011 SCMR 1429 AND 2009 SCMR 1121. He submitted that the appeal may be dismissed.

6. We have heard learned counsel for the appellant and learned GP for the state at quite length and perused the record with their assistance. According to Section-22 of the Civil Servant Act, 1973, grant of leave is subject which falls in the discretion of the competent authority. According to record, the appellant was well aware that her application in extension for leave has been regretted by the competent authority and in case she failed to assume duty, disciplinary proceedings will be initiated against her. The record further reveals that she got enrolled in Germany University only

two months prior to the expiry of her term of extra ordinary leave for two years which in the opinion of the Tribunal was not an opportune time. Appellant as Government Servant was also required to have asked for NOC for such admission. Similarly, in case of her illness she should have applied for leave on medical grounds which she has not done.

7. We have carefully gone through Rule-9 of the E&D Rules-2011. Since absence of the appellant, in the stated situation was a seemingly willful absence, therefore the department had no alternative but to take action under the said rule. On the record copy of the notices under Rule-9 issued to the appellant are available followed by citation in the daily news papers of Daily Mashriq(dated: 27.02.2015) and Daily AJJ(dated: 23.02.2015) which are the two leading news papers. According to the said Rule-9, since the appellant failed to submit arrival within the stipulated period, therefore she was legally proceeded ex-Parte. The said Rule-9 further states that its provision can be invoked even for an absence period of seven days. Absence of the appellant for two years was a valid ground not to stop disciplinary proceedings against the appellant which were in the final stage and required only a nod from the competent authority. According to Rule-5(1)(IV) of the E&D Rules-2011, it was not reasonably practicable for the respondents now to grant appellant opportunity of the showing cause or personal hearing. In the light of the foregoing discussion, the Tribunal is of the view that departmental proceedings against the appellant are covered under the law.

8. When all the above stated, this cannot be denied that departmental appeal of the appellant has not been decided in which an opportunity of personal hearing can yet be availed by the appellant. This may also be observed that under sub-rule-3 of Rule-12 of the Civil Servants Revised

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leave rules-1981, the departmental authority is vested with powers to grant retrospectively extra ordinary leave (without pay) in lieu of the absence period. We therefore, deem it appropriate to remit the matter to the respondents with the directions to decide departmental appeal of the appellant within a period of one month after receipt of this judgment. We also direct that opportunity of personal hearing be also provided to the appellant. The case is remitted to the respondents and the appeal is disposed of accordingly. Parties are left to bear their own cost. File be consigned to the record room.

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1015/2015**

**Ms. Rushda Habib.....Appellant**

**Versus**

**The Secretary Higher Education and others.....Respondents**

**INDEX**

<b>S.No.</b>	<b>Description of Documents</b>	<b>Date</b>	<b>Annexure</b>	<b>Pages</b>
<b>1.</b>	<b>Memo of Rejoinder</b>			<b>1-3</b>
<b>2.</b>				

**Through**

  
**Appellant**

**Khush Dil Khan**  
**Advocate,**  
**Supreme Court of Pakistan**  
9-B, Haroon Mansion,  
Khyber Bazar, Peshawar.  
Cell # 091-2213445

**Dated: 13 / 07 / 2016**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1015/2015**

Ms. Rushda Habib.....Appellant

Versus

The Secretary Higher Education and others.....Respondents

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**REJOINDER ON BEHALF OF APPELLANT IN RESPECT OF  
REPLY/COMMENTS FILED BY RESPONDENTS NO. 2, 3 & 4.**

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Respectfully Sheweth,

**Preliminary Objections:**

Preliminary objections raised by answering respondents are erroneous and frivolous, so denied and the detailed replies thereof are as under:-

- I. That appellant was not treated in accordance with law and rules on subject and unlawfully removed from service of which she was aggrieved and rightly filed the present appeal.
- II. That the appeal is well within time. Impugned order passed on 04-06-2015 and departmental appeal filed on 08-06-2015 and after expiry of statutory period of ninety days she filed this appeal within time.
- III. That the matter is pertaining to terms and conditions of service of appellant so she rightly filed this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.
- IV. That appellant has genuine cause of action and filed this appeal after observing codal formalities.

- V. That appellant fairly and rightly filed this appeal with clean hands.

**Rejoinder to Reply of Facts:**

1. That the answering respondents have not furnished comments in respect of para No. 1 meaning thereby they have admitted the same.
2. That the answering respondents have not furnished comments in respect of para No. 2 meaning thereby they have admitted the same.
3. That the reply is incorrect and against the record so denied.
4. That the reply is incorrect and against the record so denied.
5. That the reply is incorrect so denied. Appellant has submitted her arrival report on 16-05-2015 which was duly forwarded to respondent No. 3 for necessary action but respondent No. 3 has totally ignored the same and passed the impugned order in illegal manner which is not sustainable.
6. That the reply is incorrect and evasive in nature so denied.
7. That the reply is incorrect so denied. The answering respondents have not acted in accordance with law and passed the impugned order in harsh manner which is not sustainable under the law and liable to be set aside.

**Rejoinder to Reply of Grounds:**

- A. That the reply is incorrect so denied. The alleged absence does not fall in the definition of willful absence rather the same was due to unavoidable circumstances.


- B. That the reply is incorrect so denied. The arrival report as submitted by the appellant was neither objected nor rejected for any reason meaning by that was duly accepted by the authority but respondent No. 2 & 3 acted in arbitrary manner and passed the impugned order in slip shod manner.
- C. That the reply is incorrect and against the record so denied.
- D. That the reply is incorrect. No notice was issued to appellant under proper address as provided by appellant.
- E. That the reply is incorrect as neither her arrival report was objected nor rejected with cogent reasons.
- F. That the reply is incorrect. The impugned order is illegal being violative of principle of natural justice, having no legal effect and liable to be set aside.
- G. That the reply is incorrect so denied.
- H. That the departmental appeal of appellant was not rejected by the appellate authority. The Annexure-K with the reply is the comments of Deputy Director (Female) address to Special Secretary Higher Education Peshawar which remained without any action.

It is, therefore, humbly prayed that the reply of answering Respondents No. 2, 3 & 4 may graciously be rejected and the appeal as prayed for may graciously be accepted with all back benefits.



Appellant

Through



Khush Dil Khan  
Advocate,  
Supreme Court of  
Pakistan

Dated: \_\_\_/\_\_\_/2016

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 1178 /ST

Dated 22 / 7 / 2016


To

The Secretary,  
Higher Education Department,  
Peshawar.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 20.7.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1932 /ST

Dated. 17 / 11 / 2016

To


The Secretary Higher Education,  
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 15.11 .2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.