

BEFORE THE HON'BLE SERVICE TRIBUNAL KPK
PESHAWAR

Execution Petition No. 164/2021
in
Service Appeal No. 457/2018

Syed Hasnain Kazmi

.....^{Khyber Pakhtukhwa}
^{Service Tribunal}
Petitioner

Duty No. 5451

Dated 19/5/2023

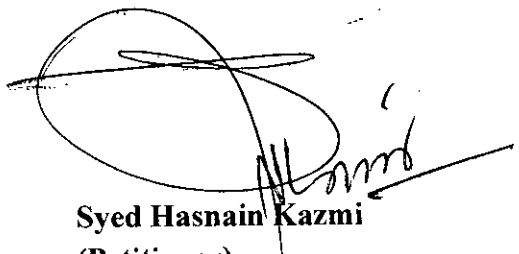
VERSUS

Government of KPK through Secretary Local Govt. & RDD KPK and others.

.....Respondents

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Syed Hasnain Kazmi
(Petitioner)

Reasons (1)

BEFORE THE HON'BLE SERVICE TRIBUNAL KPK
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Para-wise Reply to the Objection Petition dated 16/03/2023 submitted by Respondent No. 2-----The Secretary Local Govt. & RDD KPK.

Respectfully Sheweth:

1. Incorrect the above titled Execution Petition is pending before the Hon'able Service Tribunal at Camp Court Abbottabad for implementation of judgment dated 04/06/2021 passed in Service Appeal No. 457/2018.
2. Correct to the extent that the petitioner was removed from service on 12/12/2017 on account of inefficiency and misconduct. Unfortunately the respondents miserably failed to specify the allegation(s)/charge(s).
3. Correct.
4. Incorrect and misleading as the petitioner was reinstated in service with immediate effect vide Notification No. SOE/LG/3-398/ST/2021 dated 07/12/2021 when the case declared unfit for filing CPLA/Appeal before the Hon'able Supreme Court of Pakistan by the Department of Law, Parliamentary Affairs and Human Rights KPK and decisions was communicated to the respondents vide No. SO(lit)/LG/8-20/LG/2021/178-81 dated 04/08/2021. Regarding further inquiry there is not a single word about this in the whole judgment.
5. Correct and the same was sanctioned by the leave sanctioning authority.
6. Incorrect and misleading and the respondents are hiding the facts. The factual position is that after expiry of my competently sanctioned leave admissible under Rule 02 and 12 of KPK Revised Leave Rules 1981, I applied for leave on medical certificate. It is added that Rule 13 of the

Revised Leave Rules 1981 says, "**Leave applied for on medical certificate shall not be refused**". It is further added that under Rule 04 of KPK Revised Leave Rules 1981, 180 days PLUS 365 days (in entire service) can be granted on medical grounds. Similarly Rule 07(1) of ibid Rules states that, "**Leave not due may be granted on full pay to be offset against leave to be earned in future for a maximum of 365 days in the entire period of service, subject to condition that during first 05 years of service it shall not exceed 90 days in all**". The copies of my last pay slip that shows the length of my service, Standing Medical Board (SMB) Report dated 01/09/2021 and KPK Revised Leave Rules 1981 are attached as **Annexure "A"**.

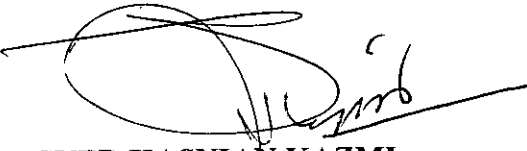
7. Correct.

8. Incorrect as the Respondent mis-interpreted the judgment of Hon'able Supreme Court of Pakistan (2003 SCMR228) because in this judgement the petitioner neither performed duty at his original place of posting nor at new station and it can be termed as willful absence, while in my case I was removed from service illegally without conducting any inquiry on account of misconduct and inefficiency. The Hon'able Service Tribunal has set aside this illegal order of removal and directed the respondent for my re-instatement forthwith. An employee, after re-instatement in service is entitled for all back benefits. Reliance is placed on judgment of the Supreme Court of Pakistan 2013 SCMR 752. Both the above mentioned authorities of the Hon'able Supreme Court of Pakistan are attached as **Annexure "B"**. Furthermore, the Establishment Department in its reply at S.No. (ii) which is reflected in the under reference objection petition, advised the Administrative Department to submit the working papers for my regular promotion in BS-18.

9. Incorrect and misleading as per report of the District Accounts Office Haripur dated 28/03/2023, still I have 370 days leave on full pay (740 days on half pay) at my credit. Report of the District Accounts Office is attached as **Annexure "C"**.

10. No Comments.

PRAYER: It is humbly prayed that the Objection Petition dated 16/03/2023 may be dismissed and contempt of court proceedings may be initiated against the respondents on account of non-compliance of court orders.


SYED HASNAIN KAZMI
(Petitioner)

BEFORE THE HON'BLE SERVICE TRIBUNAL KPK
PESHAWAR

Execution Petition No. 164/2021
in
Service Appeal No. 457/2018

Syed Hasnain Kazmi

.....Petitioner

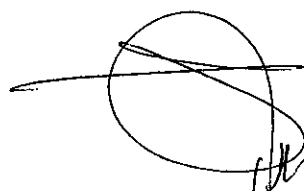
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AFFIDAVIT

I, Syed Hasnain Kazmi, Assistant Director Senior Local Govt. & RDD Haripur, do hereby declare on oath that the contents of my reply to the objection Petition dated 16/03/2023 is correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


DEPONENT 30/03/23



Dist. Govt. KP-Provincial
District Accounts Office Haripur
Monthly Salary Statement (February-2023)

ANNEXURE-A



4

Personal Information of Mr SYED HASNAIN KAZMI d/w/s of MASTANA SHAH

Personnel Number: 00856101 CNIC: 1330210807441 NTN: 1986389-6
Date of Birth: 10.04.1966 Entry into Govt. Service: 07.09.1993 Length of Service: 29 Years 05 Months 023 Days

Employment Category: Active Temporary

Designation: AD SENIOR 80002121-DISTRICT GOVERNMENT KHYBE
DDO Code: HR6359-
Payroll Section: 002 GPF Section: 001 Cash Center:
GPF A/C No: GPF Interest applied **GPF Balance:** 81,619.00 (provisional)
Vendor Number: 30327946 - SYED HUSNAIN KAZMI
Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 18 Pay Stage: 14

Wage type		Amount	Wage type		Amount
0001	Basic Pay	116,520.00	1644	Ph.d / M.Phil Allowance	2,500.00
1947	Medical Allow 15% (16-22)	4,206.00	2148	15% Adhoc Relief All-2013	1,900.00
2199	Adhoc Relief Allow @10%	1,234.00	2315	Special Allowance 2021	7,670.00
2341	Dispr. Red All 15% 2022KP	11,349.00	2347	Adhoc Rel Al 15% 22(PS17)	11,349.00

Deductions - General

Wage type		Amount	Wage type		Amount
3018	GPF Subscription	-5,360.00	3501	Benevolent Fund	-1,500.00
3609	Income Tax	-8,341.00	3617	Recovery of Conveyance Al	-5,000.00
4004	R. Benefits & Death Comp:	-1,350.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 99,929.38 Recovered till FEB-2023: 66,568.00 Exempted: 0.54- Recoverable: 33,361.92

Gross Pay (Rs.): 156,728.00 Deductions: (Rs.): -21,551.00 Net Pay: (Rs.): 135,177.00

Payee Name: SYED HASNAIN KAZMI
Account Number: 0010105732240018
Bank Details: ALLIED BANK LIMITED, 250108 ABL SHAHRAH E HAZ ABL SHAHRAH E HAZ, Abbottabad

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: MOHALLAH CHANNANAI ABBOTTABAD ROAD

City: MANSEHRA

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: mailtokazmi@gmail.com

Attested
[Signature]

System generated document in accordance with APPM 4.6.12.9(358678/25.02.2023/v3.0)

* All amounts are in Pak Rupees

* Errors & omissions excepted (SERVICES/28.02.2023/22:40:07)

¹[Khyber Pakhtunkhwa] Civil Servants Revised Leave Rules, 1981

No. FD. SO (SR-IV) 5-54 / 80 (Vol:II) dated 17-12-1981.---In exercise of the powers conferred by section 26 of the ²[Khyber Pakhtunkhwa] Civil Servants Act, 1973 (³[Khyber Pakhtunkhwa] Act XVIII of 1973) and in supersession of this Department's Notification No. FD.SO(SR-IV) 1-17/78, dated the 20th November, 1979, the Governor of the ⁴[Khyber Pakhtunkhwa] is pleased to make the following rules namely:--

1. Short title, commencement and application.---(1) These rules may be called the ⁵[Khyber Pakhtunkhwa] Civil Servants Revised Leave Rules, 1981.

(2) They shall come into force at once.

(3) They shall apply to all Civil Servants under the rule making authority of the Governor except those who opted not to be governed by the ⁶[Khyber Pakhtunkhwa] Civil Servants Leave Rules; 1979.

2. Admissibility of Leave of Civil Servant.---Leave shall be applied for, expressed and sanctioned in terms of days and shall be admissible to a civil servant at the following rate and scale:---

(i) A civil servant shall earn leave only on full pay. It shall be calculated at the rate of four days for every calendar months of the period of duty rendered and credited to the leave account as "leave on fully pay" duty period of 15 days or less in a calendar month being ignored and those of more than 15 days being treated as a full calendar month, for the purpose. If a civil servant proceeds on leave during a calendar month and returns from it during another calendar month and the period of duty in either month is more than 15 days, the leave to be credited for both the incomplete months will be restricted to that admissible for one full calendar month only.

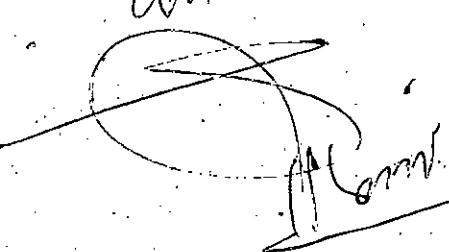
(ii) The provisions of clause (i) will not apply to vacation departments. A civil servant of a vacation department may earn leave on full pay as under:--

(a) When he avails himself of vacation in a calendar year. At the rate of one day of every calendar month of duty rendered;

(b) When during any year he is prevented from availing himself of the full vacation. As for a civil servant in non-vacation Department for that year; and

(c) When he avails himself of only a part of the vacation. As in (a) above plus such proportion of thirty days as the number of days of vacation not taken bears to the full vacation.

¹ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.
² Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.
³ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.
⁴ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.
⁵ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.
⁶ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

attested


- (iii) There shall be no maximum limit on the accumulation of such leave.

⁷[Note. Deleted]

3. - When leave earned.---(a) All service rendered by a civil servant qualifies him to earn leave in accordance with these rules but shall not be earned during the period of leave.

(b) Any period spent by a civil servant in foreign service qualifies him to earn leave provided that a contribution towards leave salary is paid to the Government on account of such period.

4. Grant of Leave on Full Pay.---(1) The maximum period of leave on full pay that may be granted at one time by the competent authority shall be as follows:--

(i)	Without medical certificate	...	120 days
(ii)	With medical certificate	...	180 days
PLUS			
(iii)	On medical certificate from leave account in entire service.	...	365 days

(2) The maxima prescribed at (i) and (ii) of sub-rule (1) are independent of each other. In other words a civil servant may be granted, at a time, total leave on full pay on medical certificate upto the permissible extent in continuation of leave upto 120 days without medical certificate, subject to given conditions.

5. Grant of Leave on Half Pay.---(1) Leave on full pay may be converted into leave on half pay, at the option of the civil servant.

(2) Debits to the leave account will be at the rate of one day of the former for every two days of the latter, fraction of one-half counting as one full day's leave on full pay.

(3) The request for such conversion shall be specified by the civil servant in his application for the grant of leave.

(4) There shall be no limit on the grant of leave on half pay so long as it is available by conversion in the leave account.

6. Conversion of Leave Account.---(1) All leave at credit in the account of a civil servant who was in service on the 1st day of July, 1978, shall be carried forward and expressed in terms of leave on full pay. The leave account in such cases shall, with effect from 1st July, 1978 or in case of civil servant who was on leave on that date with effect from the date of his return from leave, be recast as under, ignoring the fraction if any:--

(i)	Leave of full pay—			
	(a)	1 month	...	30 days
	(b)	1 day	...	1 day
(ii)	Leave on half pay—			
	(a)	1 month	...	15 days
	(b)	2 day	...	1 day

(2) In carrying forward the leave, the leave at credit of a civil servant in columns 7 and 8 and half of the leave at credit in column 9 of the existing leave account shall be carried forward to the new leave account of the civil servant.

⁷ The "Note" at the end of rule 2 deleted by Notification No. FD. 50(SR-IV)5-54/80(Vol.II), dated 01-06-1982.

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(3) The leave availed under the existing rules from column 13 (a) of the leave account shall be debited against the maximum limit of 365 days fixed under rule 4 (1) (iii).

7. Leave not due.---(1) Leave not due may be granted on full pay, to be offset against leave to be earned in future, for a maximum period of three hundred and sixty five days in the entire period of service, subject to the condition that during the first five years of service it shall not exceed ninety days in all.

(2) Such leave may be converted into leave on half pay.

(3) Such leave shall be granted only when there are reasonable chances of the Civil Servant resuming duty on the expiry of the leave.

(4) Such leave shall be granted sparingly and to the satisfaction of the sanctioning authority but it shall not be admissible to the temporary civil servants.

8. Leave Salary.---(1) Leave pay admissible during leave on full pay shall be the greater of--

(a) the average monthly pay earned during the twelve complete months immediately preceding the month in which the leave begins; and

(b) the rate equal to the rate of pay drawn on the day immediately before the beginning of the leave.

(2) When leave on half pay is taken, the amount calculated under clause (a) and (b) of sub-rule (1) shall be halved to determine the greater of the two rates.

⁸(3) A civil servant shall be entitled to the leave pay at the revised rate of pay if a general revision in pay of civil servants takes place or an annual increment occurs during the period of leave of the civil servant.]

9. Special Leave to Female Civil Servants.---As female civil servant may, on the death of her husband, be granted special leave on full pay not exceeding 130 days. This leave shall not be debited to her leave account and will commence from the date of death of her husband. For this purpose she will have to produce death certificate issued by competent authority either alongwith her application for special leave or, if that is not possible, the said certificate may be furnished to the leave sanctioning authority separately.

10. Maternity Leave.---(1) Maternity leave may be granted on full pay, outside the leave account, to a female civil servant to the extent of ninety days in all from the date of its commencement or forty five days from the date of her confinement, whichever be earlier.

(2) Such leave may not be granted for more than three times in the entire service of a female civil servant except in the case of a female civil servant employed in a vacation department who may be granted maternity leave without this restriction.

(3) For confinement beyond the third one, the female civil servant would have to take leave from her normal leave account.

(4) The spells of maternity leave availed of prior to the coming into force of these rules shall be deemed to have been taken under these rules.

(5) Maternity leave may be granted in continuation of, or in combination with, any other kind of leave including extraordinary leave as may be due and admissible to a female civil servant.

⁸ Sub-rule (3) of rule 8 rule 8 added by Notif. No. FD.SO SR-IV)5-54/80-Vol.III, dated 26.10.1994.

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(6) Leave salary to be paid during maternity leave shall be regulated as for other leave, in accordance with the formula provided in rule 8.

(7) The leave salary to be paid during maternity leave will, therefore, remain unaffected even if any increment accrues during such leave and the effect of such an increment will be given after the expiry of maternity leave.

11. Disability Leave.---(1) Disability leave may be granted outside leave account on each occasion upto a maximum of seven hundred and twenty days on such medical advice as the head of office may consider necessary, to a civil servant, other than civil servant in part time service, disabled by injury, ailment or disease contracted in course or in a consequence of duty or official position.

(2) The leave salary during disability leave shall be equal to full pay for the first one hundred and eighty days and on half pay for the remaining period.

12. Extraordinary Leave (Leave without Pay).---(1) Extraordinary leave may be granted on any ground upto a maximum period of five years at a time; provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less than ten years. In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave sanctioning authority. This leave can be granted irrespective of the fact whether a civil servant is a permanent or temporary employee.

(2) The maximum period of extraordinary leave without pay combined with leave on full pay and leave on half pay shall be subject to the limit of 5 years prescribed in FR-18, i.e. the maximum period of extraordinary leave without pay that would be admissible to a civil servant who has rendered continuous service for a period of not less than 10 years shall be 5 years less the period of leave on full pay and leave on half pay so combined.

⁹[(3) Extraordinary leave may be granted retrospectively in lieu of absence without leave.]

13. Leave on Medical Certificate.---Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical Board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212, 213 and Rule 220 to 231 for the grant of leave on medical grounds will continue to apply.

14. Leave Preparatory to Retirement.---The maximum period upto which a Civil Servant may be granted leave preparatory to retirement shall be 365 days only. It may be taken subject to availability in the leave account, either on full pay or partly on full pay and partly on half pay, or entirely on half pay, at the discretion of the Civil Servant and it will not extend beyond the age of superannuation.

15. Recreation Leave.---Recreation leave may be granted for fifteen days once in a calendar year, the debit to the leave account may, however, be for ten days leave on full pay;

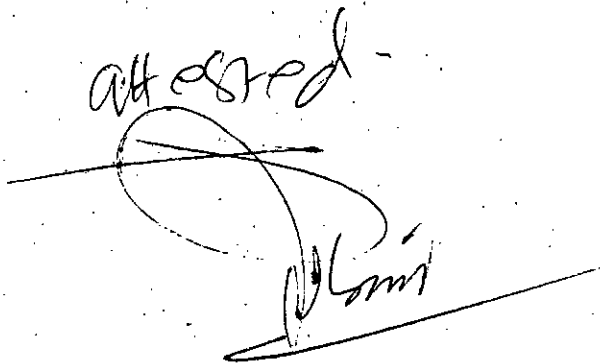
Provided that such leave shall not be admissible to a Civil servant in a vacation department.

Note: Casual Leave (as Recreation Leave) shall, however, continue to be granted for 10 days only subject to other conditions under Government instructions.

16. Leave Ex-Pakistan.---(1) Leave Ex-Pakistan may be granted on full pay to a civil servant who applied for such leave or who proceeds abroad during leave, or takes leave while posted abroad or is otherwise on duty abroad and makes a specific request to that effect.

(2) The leave pay to be drawn abroad shall be restricted to a maximum of three thousand rupees per month.

⁹ Sub-rule (3) of rule 12 added by Notification NO. FD.SO(SR-IV)5-54/80 (Vol.II), dated 01.06.1982.

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(3) The leave pay shall be payable in sterling, if such leave is spent in Asia other than Pakistan and India.

(4) Such leave pay shall be payable for the actual period of leave spent abroad subject to maximum of one hundred and twenty days at a time.

(5) The civil servants appointed after 17th May, 1958, shall draw their leave salary in rupees in Pakistan irrespective of the country where they spent their leave.

(6) Leave Ex-Pakistan will be regulated and be subject to the same limits and conditions as prescribed in rule 4,5 and 12.

17. Assigning reasons for leave.---It shall not be necessary to specify the reasons for which leave has been applied, so long as that leave is due and admissible to a civil servant.

18. Commencement and end of leave.---Instead of indicating whether leave starts / ends in the forenoon or after-noon, leave shall commence from the day following that on which a civil servant hands over the charge of his post. It shall end on the day preceding that on which he resumes duty.

19. Absence after the expiry of leave.---Unless his leave is extended by the leave sanctioning authority, a civil servant who remains absent (except for circumstances beyond his control) after the end of his leave shall not be entitled to any remuneration for the period of such absence and double period of such absence shall be debited against his leave account. Such debit shall if there is insufficient credit in the leave account, be adjusted against future accumulations. Such double debit shall not preclude any disciplinary action that may be considered necessary under any rule for the time being in force after affording a reasonable opportunity to the civil servant concerned to indicate his position.

¹⁰[20. Encashment of Leave Preparatory to Retirement.--- ¹¹[(1)] Where a civil servant opts not to avail the leave preparatory to retirement admissible to him under rule 14, he shall be allowed leave salary for the period for which leave preparatory to retirement is admissible, subject to a maximum of ¹²[three hundred and sixty-five] days. For the purpose of lump sum payment in lieu of leave preparatory to retirement only the senior post allowance will be included in the leave pay so admissible. The payment of leave pay in lieu of leave preparatory to retirement may be made to the civil servant either in lump sum at the time of retirement or may at his option, be drawn by him monthwise, in arrears, for and during the period of leave preparatory to retirement. This amendment shall take effect from 01.07.1983.]

¹³[(2) Encashment of leave preparatory to retirement (LPR) not exceeding three hundred and sixty five days shall be effective from the first day of July, 2012 and shall, for the entire period of leave refused or opted for encashment, be applicable to a civil servant retired or, as the case may be, retiring on or, after the first day of July 2012, provided such leave is available at his credit subject to a maximum of three hundred and sixty five days.

(3) If at any time during such period, leave is granted on account of ill health supposed by medical certificate or for performance of Hajj, the amount of cash compensation on account of leave pay shall be reduced by an amount equal to the leave pay for the period of leave so granted]

(4) Leave pay for the purpose of encashment of LPR shall be computed on the basis of pay and allowances reckonable towards pension as shown in the last pay certificate of a civil servant.]

¹⁴[21. In Service Death, etc.---(1) In case a civil servant dies, or is declared permanently incapacitated for further service by a Medical Board, while in service, a lump sum payment equal to leave

¹⁰ Rule 20 substituted by Notification No. FD.SO(SR-IV)5-54(Vol:II), dated 24th August, 1983.

¹¹ Renumbered as sub-rule (1) by Notification No. (FR)FD-5-92/2005/Vol-V, DATED 13-12-2012

¹² Substituted for the words "one hundred and eighty" by Notification No. (FR)FD-5-92/2005/Vol-V, DATED 13-12-2012.

¹³ Substituted for the words "one hundred and eighty" by Notification No. (FR)FD-5-92/2005/Vol-V, DATED 13-12-2012.

¹⁴ Rule 21 substituted by Notification No.FD.SO(SR-IV)5-54/80(Vol:III), dated 03.05.1988

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pay upto one hundred and eighty days out of the leave at his credit shall be made to his family as defined for the purposes of family pension or, as the case may be, to the civil servant.

(2) For the purpose of lump sum payment under sub rule (1), only the "senior prost allowance" will be included in the "leave pay" so admissible.]

22. Recall from Leave.---If a civil servant is recalled to duty compulsorily with the approval of the leave sanctioning authority, from leave of any kind, which he is spending away from his headquarters, he may be granted single return fare plus daily allowance as admissible on tour from the station where he is spending his leave to the place where he is required to report for duty. In case he is recalled to duty at headquarters and his remaining leave is cancelled, the fare then admissible shall be for one way journey only. If the order of recall to the civil servant is optional then the concession above mentioned will not be admissible.

23. Any type of leave may be applied.---A civil servant may apply for the type of leave which is due and admissible to him and it shall not be refused on the ground that another type of leave should be taken in the particular circumstances for example, a civil servant may apply for extraordinary leave or leave on half pay even if leave on full pay is otherwise due and admissible to him, or he may proceed on extraordinary leave followed by leave on half pay and full pay rather than on full pay, half pay and without pay.

24. Combination of different types of leave etc.---One type of leave may be combined with joining time or with any other type of leave otherwise admissible to the civil servant:

Provided that leave preparatory to retirement shall not be combined with any other kind of leave.

25. Civil Servants on leave not to joint duty without permission before its expiry.---Unless he is permitted to do so by the authority which sanctioned his leave a civil servant on leave may not return to duty before the expiry of the period of leave granted to him.

26. Leave due may be granted on abolition of post, etc.---(1) When a post is abolished, leave due to the civil servant, whose services are terminated in consequence thereof, shall be granted without regard to the availability of a post for the period of leave.

(2) The grant of leave in such cases shall, so long as he does not attain the age of superannuation be deemed automatically to have also extended the duration of the post and the tenure of its incumbent.

27. Manner of handing over charge when proceeding on leave, etc.---(1) A civil servant proceedings on leave shall hand over the charge of his post, and if he is in Grade-16 and above, he shall, while handing over charge of the post, sign the charge relinquishment report.

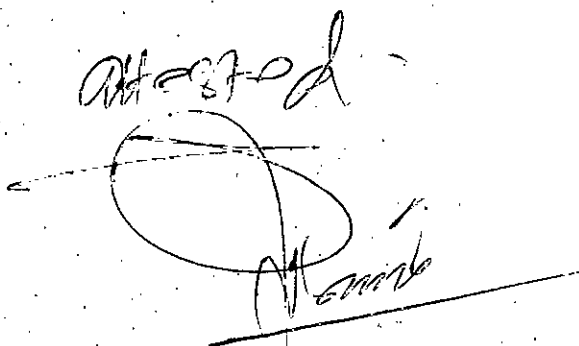
(2) If leave ex-Pakistan has been sanctioned on medical grounds, the civil servant shall take abroad with him copy of the medical statement of his case.

28. Assumption of charge on return from leave, etc.---(1) A civil servant, on return from leave, shall report for duty to the authority that sanctioned his leave and assume charge of the post of which he is directed by that authority unless such direction has been given to him in advance.

(2) In case he is directed to take charge of a post at a station other than that from where he proceeded on leave, travel expenses as on transfer shall be payable to him.

29. Account Officer to maintain leave account.---(1) Leave account in respect of a civil servant shall be maintained as part of his Service Book.

(2) The Account Offices shall maintain the leave accounts of civil servants of whom they were maintaining the accounts immediately before the coming into force of these rules.

attached


30. Leave to lapse when civil servant quits service.---All leave at the credit of a civil servant shall lapse when he quits service.

31. Leave application, its sanction, etc.---(1) Except where otherwise stated, an application for leave or for an extension of leave must be made to the head of office where a civil servant is employed and, in the case of the head of office to the next-above administrative authority and the extent of leave due and admissible shall be stated in the application.

(2) An audit report shall not be necessary before the leave is sanctioned.

(3) When a civil servant submits a medical certificate for the grant of leave, it shall be by an authorised medical attendant in the form attached to these rules.

(4) Leave as admissible to a civil servant under these rules may be sanctioned by the head of a department, Attached Department, Office or any other officer authorised by him to do so and, when so required, leave shall be notified in the official Gazette.

(5) In case where all the applications for leave cannot, in the interest of public service, be sanctioned to run simultaneously, the authority competent to sanction leave shall, in deciding the priority of the applications consider:

- (i) whether, and how many applicants can, for the time being, best be spared;
- (ii) whether any applicants were last recalled compulsorily from leave; and
- (iii) whether any applicants were required to make adjustment in the timing of their leave on the last occasion.

FORM OF MEDICAL CERTIFICATE

FORM-I

Signature of applicant _____

MEDICAL CERTIFICATE FOR CIVIL SERVANTS RECOMMENDED FOR LEAVE OR EXTENSION

I, _____ after careful _____ personal examination of the case, hereby certify that, _____ whose signature is given above, is suffering from _____ and I consider that a period of absence from duty of _____ more with effect from _____ is absolutely necessary for the restoration of his / her health.

Dated, the _____ Government Medical Attendant

APPLICATION FOR LEAVE

FORM-II

Notes:--Item 1 to 9 must be filled in by all applicants, Item 12 applied only in the case of Government servants of Grade 16 and above.

1. Name of applicant.
2. Leave Rules applicable.
3. Post held.
4. Department or office.
5. Pay
6. House rent allowance / conveyance allowance or other compensatory allowances drawn in the present post.

attested

- 7. (a) Nature of leave applied for.
- (b) Period of leave in days.
- (c) Date of commencement.

8. Particular Rule / Rules under which leave is admissible.

- 9. (a) Date of return from last leave.
- (b) Nature of Leave.
- (c) Period of leave in days.

Signature of applicant

10. Remarks and recommendation of the Controlling Officer.

11. Certified that leave applied for is admissible under Rule and necessary conditions are fulfilled.

Signature
Designation

12. Report of Audit Office.

Signature
Designation

13. Orders of the sanctioning authority certifying that on the expiry of leave the applicant is likely to return to the same post carrying the compensatory allowances being drawn by him.

Signature
Designation

Dated.....

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FORM III

FORM OF LEAVE ACCOUNT UNDER THE REVISED LEAVE RULES, 1981

Leave Account of Mr. / Miss / Mrs
 Date of commencement of service
 Date of attaining the age of superannuation

(N.B. — Instruction for filling in the form are printed on the succeeding pages.
 LEAVE TAKEN (From Column 8 to 20)

Government / Dep artment served under	PERIOD OF DUTY		From	2	3	4	5	6	7	8	9	To	10	11	12	LEAVE ON HALF PAY		14	15	16	17	LEAVE NOT DUE		18	19	20	21	22	23									
			From																																			
													Leave on full pay without medical certificate subject to maximum of 120 days & 365 days in case of L.P.R.		Leave on full pay on medical certificate subject to maximum of 180 days.		Leave on full pay on medical certificate subject to maximum of 365 days in entire service.		In terms of half pay		In terms of full pay		In terms of half pay		In terms of full pay		Actual No. of days		No. of days (double the actual number)		Total leave (Columns 10+11+12+14+15+17+19)		Balance on 01.07.1978/return from leave (Column 7-20)		Remarks		ATTTESTATION	

Explanatory Instructions for Filling up the Leave Account Form

- This leave account will be maintained for all civil servants of the Provincial Government who were in service on the 1st July, 1978 including those who were on leave on that date and have not opted to retain the existing leave rules and all others who enter service on or after 1st July, 1978.

A large, stylized handwritten signature is written across the bottom of the page. Below it, there is a faint circular stamp or seal, partially obscured by the signature.

2. All leave at credit in the account of a civil servant who was in service on the 1st July, 1978 shall be converted in terms of leave on full pay at the following rates:--

(i)	Leave of full pay--				
	(a)	1 month	...	30 days	
	(b)	1 day	...	1 day	
(ii)	Leave on half pay--				
	(a)	1 month	...	15 days	
	(b)	2 day	...	1 day	

(Fraction, if any, to be ignored).

3. The leave account shall commence with an opening entry "Due on 1st July, 1978" or in the case of a Civil servant, who was on leave on 1st July, 1978 with effect from the date of his return from leave. For the purpose of computing the leave at credit, the service upto 30th June, 1978 will be taken into account. The leave due in terms of leave on full pay in days will be noted in Column No. 21.

4. (i) In calculating the leave earned on full pay at the rate of 4 days for every calendar month the duty period of 15 days or less in a calendar month shall be ignored and those of more than 15 days shall be treated as a full calendar month for the purpose. If a civil servant proceeds on leave during a calendar month and returns from it during another calendar month and the period of duty in either month is more than 15 days, the leave to be credited for both the incomplete months will be restrict to that admissible for one full calendar month only. There shall be a maximum limit on accumulation of this leave.

(ii) The provision (i) above will not apply to a vacation department. In its case, a civil servant may earn leave on full pay (a) when he avails himself of full vacation in a calendar yearat the rate of one day for every calendar month of duty rendered (b) when during any year he is prevented from availing himself of the full vacation.....as for a civil servant in a non-vacation department for that year, and (c) when he avails himself of only a part of the vacation.....as in (a) above plus such portion of thirty days as the number of days of vacation not taken bear to the full vacation.

5. (a) Leave on full pay may be converted into leave on half pay at the option of the civil servant, the debit to the leave account will be at the rate of one day of the former for every two days of the latter, fraction of one half counting as on full days leave on full pay. The request for such conversion shall be specified by the civil servant in his application for the grant of leave.

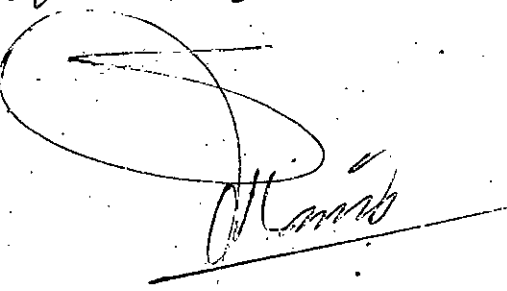
(b) There shall be no limit on the grant of leave on half pay so long as it is available by conversion in the leave account.

6. L.P.R. on full pay will be noted in column No. 10 while that on half pay in columns No. 13 and 14.

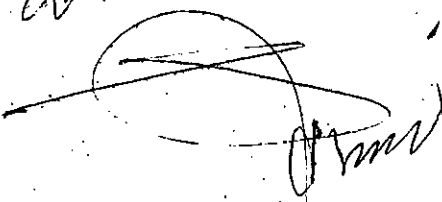
7. Leave not due may be granted on full pay to be off-set against leave to be earned in future for a maximum period of 365 days in the entire period of service subject to the condition that during the five years of service it shall not exceed 90 days in all. Such leave may be converted into leave on half pay. It shall be granted only when there are reasonable chances of the civil servant resuming duty.

8. The grant of Special Leave, Maternity Leave, Disability Leave, Extraordinary Leave, payment of leave pay for refused L.P.R. upto a maximum of 180 days lump sum payment equal to full pay upto 180 days out of leave at credit made to the family of a Government servant whose death occurs while in service, Seaman sick leave, Departmental Leave, Study Leave, Hospital Leave and Quarantine Leave shall be noted in Column No. 22. Maternity leave other than three times in entire service shall however be debited to the relevant column of the leave account.

9. When a Government servant applies for the leave columns 2 to 7 shall be filled in showing the period of duty upto the date preceding that on which a Government servant intends to go on leave. The full calendar months to be noted in column 5 shall be worked out on the lines indicated in para 4 above.

attested


10. When a Government servant returns from leave, column 8 to 23 shall be filled in according to the nature of leave. If leave not due to is availed of the minus balance to be shown in column No. 21 should be written in red ink.

attested


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Most Immediate

Court Case



**GOVERNMENT, OF KHYBER PAKHTUNKHWA
LOCAL GOVERNMENT, ELECTIONS & RURAL DEVELOPMENT DEPARTMENT**

No. SO (LII)/LG/2-2/HCI/2020

Dated Peshawar the, 24th August, 2021

To: The Director General,
Health Services, Peshawar.

Main Diary No. 2588

Date: 25/8/21

Subject: STANDING MEDICAL BOARDS

Directorate General Health Services,
Khyber Pakhtunkhwa

Reference this Department letter No.SO(E)(LG-1)/3-398/ST/2014/KC/2955 dated 09.07.2021 (copy enclosed).

I am directed to refer to the subject cited above and to state that the report submitted by the Chairman, Standing Medical Board, Medical Superintendent Police / Service Hospital Peshawar vide letter No.2549-50/MS/SMB/2020-21 dated 19.07.2021 wherein "the Board referred the patient to Cardiologist who is of the opinion that cardiac wise he is fit at present moment. He has got history of treatment record which may be verified from concerned hospital if needed" (copy enclosed).

The said report has been perused in light of the Judgment of the Service Tribunal and it is noted that the opinion of the Standing Medical Board discussed his present health condition while it was required to examine his past medical history that he remained under treatment abroad for a long period as per the medial record, he possessed. In this context, the report is returned with the request to review the present health condition of Syed Hasnain Kazmi and also come up with a clear stance about the genuineness of the illness /medical history of the appelliant in light of record in his possession with present health condition.

The report deals with the service matter of Syed Hasnain Kazmi, therefore, the compliance of the Judgment of Service Tribunal must be carried out to reach a logical conclusion.

The operative part is again reproduced:-

"We direct that a fresh Medical Board be constituted by the competent authority to examine the appelliant in the light of his past clinical treatment and its record in his possession as well as effects of the illness on his present health condition, if any. Let the Medical Board come up with an independent opinion as to genuineness of the medical history of the appelliant in light of record in his possession in juxtaposition with the present health conditions"

An early action is requested please, being court matter.

Encl as Above

SECTION OFFICER (LITIGATION)

Copy forwarded to the:-

1. Medical Superintendent, Police / Services Hospital Peshawar w/r to his letter quoted above.
2. Syed Hasnain Kazmi, Ex-Assistant Director LG.
3. PS to Secretary LG, E&RDD.

Handwritten signature of Section Officer (Litigation)
SECTION OFFICER (LITIGATION)

Handwritten signature



**OFFICE OF THE
MEDICAL SUPERINTENDANT
SERVICES HOSPITAL, PESHAWAR**

Phone: (11) 921 9210509 (Exch) 091 9223472 Fax: 091 9210543

No. 349-50 /MS/SMH/2020-21

Dated 07/09/2021

Section Officer (Litigation)
Local Government Election & Rural Development
Khyber Pakhtunkhwa
Peshawar.

Subject: - STANDING MEDICAL BOARD

Memo: - With reference to your office letter No: SO(Lit)/LG/2-2/HC/2020 dated 24-08-2021 addressed to Director General Health Services Khyber Pakhtunkhwa on the subject noted above.

Mr. Syed Hasnain Kazmi, Ex- Assistant Director (JR) Local Government was examined by the Standing Medical Board held in this office on 01/09/2021. The proceedings of the Standing Medical Board are sent herewith for further necessary action.

Handwritten signature
Chairman
Standing Medical Board
Medical Superintendent
Police/Service Hospital
Peshawar

Copy to:

Director General Health Services Khyber Pakhtunkhwa Peshawar for information with reference to his letter No: 6467-70/M Dated 30/08/2021.

Received original report of S.M.B dated 01/09/2021

Handwritten signature
01/09/2021
at 12:43 pm

OFFICE OF THE CHAIRMAN STANDING MEDICAL BOARD/MEDICAL SUPERINTENDENT POLICE/SERVICES, HOSPITAL PESHAWAR.

The Standing Medical Board comprising the following members assembled in the office of the Medical Superintendent Police/Services, Hospital Peshawar to examine, Mr. Syed Hasnain Kazmi, Assistant Director (JR.) Local Govt.

The Standing Medical Board is of the opinion that patient's previous record shows that he has been treated for DM and IHD (Including coronary Angiography). However currently he is stable cardiac wise. As mentioned in the proceedings of previous SMB on 14-07-2021.

STATION PESHAWAR
DATED: 01/09/2021

(Dr. Niaz Muhammad)
Chairman
Standing Medical Board
Medical Superintendent
Police/Services, Hospital,
Peshawar.

(Dr. Naseer Ahmad)
Ophthalmologist
Police/Services Hospital,
Peshawar...Member...

(Dr. Asif Izhar)
Physician
Police/Services, Hospital
Peshawar. Member...

(Dr. Kamran Khan)
Orthopedic Surgeon
Standing Medical Board
Police/Services Hospital, Peshawar

(Dr. Aurangzeb Afridi)
DMS/Secretary
Standing Medical Board
Peshawar... Member...

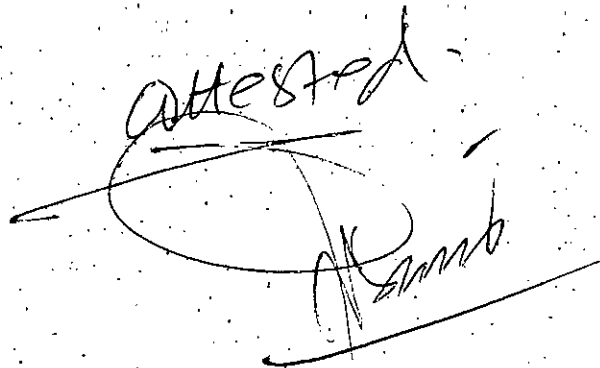
(19)

ILLNESS SUMMARY

S.No.	Date	Name of Doctor/ Laboratory	Activity/Action
01.	01/03/2016	Dr. Susan Wigg, TCH, ACT, Australia.	Recommended Medical Tests. Page 01.
02.	09/03/2016	David Sharroack, Canberra Centre, Australia.	Diabetics Screening Test. Page 02.
03.	02/05/2016	Dr. Anil Goel, GP Kambah Medical Center, Kambah, ACT, Australia.	Given Falurix and asked for urgent tests suggested by Dr. Susan Wigg Page 08.
04.	05/05/2016	Laverty Pathology Lab, ACT Australia.	Blood Test. Pages 03-06.
05.	10/05/2016	Dr. Anil Goel, GP Kambah Medical Centre, Kambah, ACT, Australia.	Referred to Surgeon Dr. Xiaoming Liang, TCH, ACT, Australia. Pages 07-09.
06.	11/05/2016	Belconnen Health Centre, ACT, Australia.	Diabetic Foot Assessment. Page 10.
07.	08/06/2016	Outpatients Administration, the Canberra Hospital ACT Australia.	Placed on waiting list for general surgery. Page 11.
08.	02/09/2016	Dr. Alan McNeil, Pathologist, Australia.	Bowl Cancer Screening Test. Page 12.
09.	04/10/2016	Laverty Pathology Laboratory, ACT Australia	Blood Tests. Pages 13-14.
10.	26/10/2016	Canberra Heart Clinic, ACT, Australia.	Echocardiogram. Pages 15-16.
11.	02/11/2016	Capital Pathology Laboratory, Australia.	Blood test. Pages 17-20.
12.	18/11/2016	The Canberra Hospital, ACT Australia.	Angiography. Pages 21-22.
13.	09/12/2016	The Canberra Hospital, ACT Australia.	Angioplasty. Pages 21-22.
14.	05/01/2017	Laverty Pathology Lab. ACT, Australia.	Blood Tests. Pages 23-28.
15.	22/02/2017	Dr. Christopher Allada, Cardiologist, Canberra Heart Clinic, ACT, Australia.	Reviewed and suggested annual review on 23/11/2017. Pages (vi) & (vii).
16.	04/03/2017	Dr. Srinivas Vure, GP ACT, Australia.	Reviewed. Page 29.
17.	06/03/2017	Laverty Pathology Lab, ACT, Australia.	Blood Tests. Pages 30-32.
18.	09/03/2017	Calvary Hospital Bruce, ACT, Australia.	Cardiac Rehabilitation. Pages 37-38.
19.	03/04/2017	Dr. Anil Goel, Kambah, ACT, Australia.	Annual Review. Page 36.
20.	18/04/2017	Rita Bashouri Optometrist, ACT, Australia.	Diabetic Retinal Screening Test. Page 39.
21.	23/05/2017	Belconnen Health Center, ACT, Australia.	Diabetic Foot Assessment. Page 40.
22.	26/05/2017	Laverty Pathology Lab, ACT, Australia.	Blood Tests. Page 42-45.
23.	14/06/2017	Surgeon Dr. Xiaoming Liang, the Canberra Hospital, ACT, Australia.	Placed on Elective Surgery waiting list. Pages 46-47.

NOTE

- A. The disputed period between the parties was April 2016–June 2017.
- B. As per medical treatment record during this period the petitioner had been treated for Lipoma, Diabetes Mellitus (DM), Ischemic Heart Disease (IHD), Bowl Cancer, Cardiac Rehabilitation and Diabetic related diseases like Foot and Retina damages :

attested


2003 S C M R 228

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN (PROCESS)---Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through Chairman,
OGDC Head Office, Islamabad---Respondent

Civil Petition For. Leave to Appeal No-51 of 2002, decided on 11th September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal service Tribunal, Islamabad,
in Appeal No. 1076(R)CE of 2000)

(a) Civil service-

---Pay, entitlement to---When there is no work, there is in no pay.

(b) Civil service-

--- Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at. original place, where he was paid salary for about three years. ---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant-- Validity---Civil servant had not performed his duties either at original place or at transferred place, thus, was not entitled to salary---Period for which refund of salary was effected from civil servant was the period for which, he had not worked---When there was no work, there was no pay---Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made out---Supreme Court dismissed petition for leave to appeal in circumstances---Constitution of Pakistan (1973), Art. 212(3).

Sadiq Muhammad Warraich, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record (absent) for Petitioner.

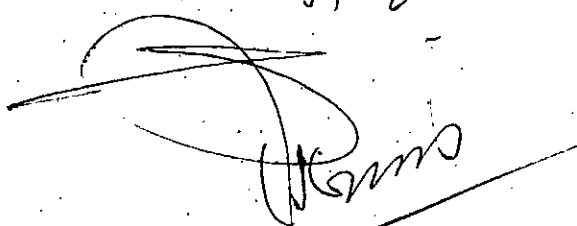
Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocateai-Record for Respondent.

Date of hearing: 11th September, 2002.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.---Petitioner seeks leave to appeal against that judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No. 1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and

attested


Regulations, 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay, ordered by the Court as E.O.L is injustice with me."

On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

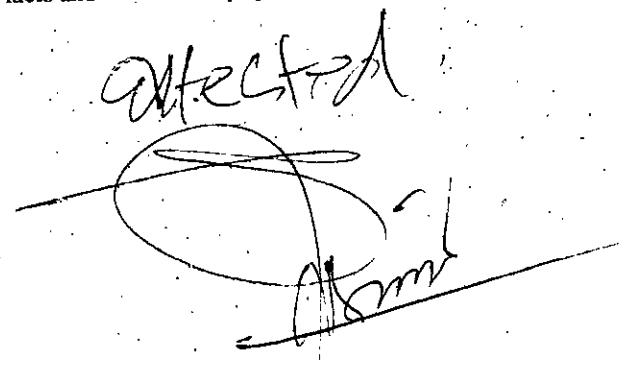
"(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-1999 (PR244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty.

"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para. 141-A, please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

6. Sardar Muhammad Aslam, learned Dy.A.G. further pointed out that recovery was already been effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted, to his Managerial post.

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

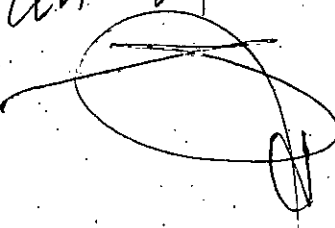
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8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S.A.K./N-100/S

Petition dismissed.

attested


2013 S C M R 752

[Supreme Court of Pakistan]

Present: Nasir-ul-Mulk and Tariq Parvez, JJ

CHAIRMAN, STATE LIFE INSURANCE CORPORATION OF PAKISTAN, KARACHI
and others---Appellants

Versus

SIDDIQ AKBAR---Respondent

Civil Appeal No.1186 of 2012, decided on 30th January, 2013.

(On appeal from the judgment/order dated 12-9-2012 passed by Lahore High Court, Lahore in W.P. No.7249 of 2012):

(a) Civil service---

•---Dismissal from service---Rights of employee on reinstatement in service---Employee reinstated in service after exoneration of the charge--- Right/entitlement of such employee to continuation of service, increment in salary and pro forma promotion for the period he remains suspended or dismissed---Scope---Employee (respondent), in the present case, was charge-sheeted for misappropriation and embezzlement on basis of which he was dismissed from service---Fresh inquiry committee was constituted on the directions of the Supreme Court, which committee exonerated employee of the charges---Competent authority treated period during which employee remained dismissed as extra ordinary leave without pay and he was denied salary for such period on the ground that he physically remained out of service---Competent authority also denied the employee increment of two years during which he remained dismissed from service and also did not consider him for promotion with retrospective effect as he was dismissed from service and his Annual Confidential Reports for such period were not available--High Court allowed constitutional petition filed by employee and ordered that period for which he remained dismissed was to be considered as period spent on duty; that annual increment for the two years during which he remained dismissed were to be granted to him, and that he should also be considered for pro forma promotion with effect from the date when his batchmates were promoted---Validity---Once an employee was reinstated in service after exoneration of the charges levelled against him, the period during which he remained either suspended or dismissed could not be attributed as a fault on his part---Absence of employee, in the present case, during period of his suspension and subsequent dismissal was not voluntary on his part but it was due to the order of the employer-Corporation (appellant), which restrained him from attending his job/duty---Exoneration of the charge meant that employee stood restored in service, as if he was never out of service of the employer-Corporation---Period during which employee remained dismissed, therefore, was to be considered as period he "remained in service"---Since absence/non-attendance of employee at work was not voluntary on his part and it was due to the steps taken by the employer-Corporation, therefore, his service record could neither be adversely affected nor could he be denied any benefit to which he would have been entitled had he not been suspended or dismissed---Appeal was dismissed accordingly.

(b) Limitation---

---Bar of limitation---Principles---Limitation was a bar against a party in pursuing its cause and not a bar regarding assumption of jurisdiction by a court because the court for justified reasons could condone the time limitation.

Ali Muhammad v. Muhammad Shafi PLD 1996 SC 292, and Chairman, State Life Insurance Corporation v. Hamayun Irfan 2010 SCMR 1495 ref.

alleged
[Signature]

Raja M. Ibrahim Satti, Senior Advocate Supreme Court for Appellants.

M. Munir Paracha, Advocate Supreme Court for Respondent.

Date of hearing: 30th January, 2013.

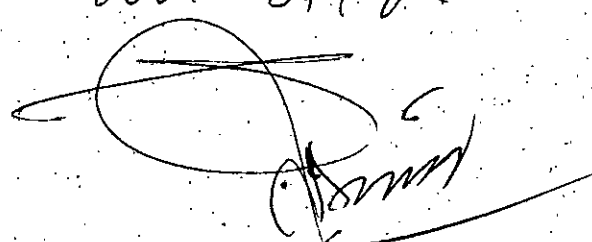
JUDGMENT

TARIQ PARVEZ, J.—Lengthy round of litigation had finally reached to this Court through Civil Petition for Leave to Appeal No.1710 of 2010. The petition came up for hearing on 21-12-2012 and the same was converted into appeal, inter alia, on the grounds to consider the following questions as formulated in the leave granting order:--

- (a) whether for the period the respondent remained suspended/dismissed from service, he shall be entitled to annual increment?
- (b) when the department has considered the respondent on extra-ordinary leave without pay for the period of 456 days; whether, under the law, he could be held entitled for payment of the salary for these days, treating him to be present on duty?
- (c) whether the period during which the respondent remained suspended/dismissed from service can be considered while determining his seniority?

2. The respondent, while serving as Zonal Head, Sahiwal, Zone of State Life Insurance Corporation of Pakistan was charge sheeted on 28-8-1996 and 10-9-1996 on the charges of misappropriation and embezzlement. He was proceeded against departmentally and was dismissed from service on 8-5-1997. The dismissal order was challenged by filing Writ Petition before the Lahore High Court, Multan Bench, where dismissal order was suspended on 20-5-1997 and ultimately the said Writ Petition was allowed and dismissal order was quashed by the High Court vide order dated 30-3-1998. The appellant then filed Civil Petition for leave to appeal before this Court, which petition was converted into appeal and allowed and the judgment of the High Court dated 30-3-1998 was set aside with direction to the respondent to seek redressal of his grievance before the competent forum i.e. the Federal Service Tribunal. Consequently, the respondent filed two Service Appeals before the Federal Service Tribunal but both were dismissed on 9-3-1999; the judgment of the Service Tribunal was challenged by the respondent again by two separate Civil Petitions before this Court and this Court on 15-7-1999 allowed and set aside the order of the Service Tribunal with the observation that the disciplinary proceedings before the Department shall be deemed to be pending and shall be decided afresh after constitution of enquiry committee in accordance with law. The freshly constituted enquiry committee on 2-3-2001 exonerated the respondent from the charges served upon him through the charge sheets mentioned hereinabove. After exoneration the competent authority decided that the period during which the respondent remained dismissed from service i.e. from 8-5-1997 to 2-3-2001 shall be treated as extra ordinary leave without pay. The above decision of the authority was challenged by the respondent through representations dated 16-1-2001 and 21-4-2002. His representations were not acceded to. However, after about 8/9 years, the respondent filed yet another representation on 1-7-2010 and this time the competent authority vide order dated 27-7-2010 decided that the period from 8-5-1997 to 2-7-1997 (56 days) and from 9-6-1998 to 5-8-1999 (445 days), when the respondent was not in service be treated as extra ordinary leave without pay. This was again challenged by the respondent through Constitution Petition No.1829 of 2010, which was disposed of in the terms that the respondent shall file representation which shall be decided by the department within three months. It appears that since no order was passed on the representation, a fresh Writ Petition was filed by the respondent bearing No.1318 of 2012, which was disposed of on 20-1-2012 with direction that if the appeal of the respondent is pending, the same shall be deiced within two weeks.

assessed



Upon fresh appeal filed on 6-7-2011, the competent authority vide order dated 15-2-2012 decided the appeal and granted relief to the respondent only to the extent that 56 days i.e. w.e.f. 8-5-1997 to 2-7-1997 be treated as spent on duty whereas rest of the relief was declined.

Being not satisfied, the respondent filed yet another Writ Petition bearing No.7249 of 2012, which was subject matter of instant proceedings and on 12-9-2012, the said Writ Petition was allowed with the following relief given to the respondent:--

- (a) That the period of 456 days as noted above is liable to be considered as a period spent on duty.
- (b) The annual increment for the years 1999 and 2000 may be granted to the petitioner as the same have been granted to other similarly placed employees; and
- (c) The petitioner may be considered for pro forma promotion w.e.f. the date when his batch mate were promoted with due record to the petitioner's right to seniority;

Hence, this appeal by leave of the Court.

3. The principal contention of the learned counsel for the appellant-Corporation is that no relief as claimed by the respondent could be granted to him and that the learned High Court in Constitutional jurisdiction has acted in a manner as if it was hearing an appeal.

His submission is that as far as awarding relief of considering the respondent to be on duty for the period he remained under suspension or dismissal, is against the law and facts because when the respondent has not attended the office physically nor he was assigned any duty/job, he cannot be held entitled to any remuneration on the principle 'no work, no salary' and thus the respondent has been awarded something which was not his entitlement.

The learned counsel submits that similarly, the relief of awarding two increments for two years i.e. 1999-2000 and 2000-2001 have wrongly been granted to the respondent against the fact that in these two years, he had not provided any services to the appellant and thus is not entitled to increment for the period, he has not worked.

The learned counsel has also challenged the relief of giving pro forma promotion to the respondent on the ground that when in the year 2002, the cases of batch mates of the respondent were placed before the competent authority for consideration for promotion, the respondent could not be promoted because of non-availability of his three previous ACRs, as during such period he was either under suspension or was dismissed by the order of competent authority, as such, according to the learned counsel, he cannot claim pro forma promotion. He has added that, however, when the right of promotion became due to the respondent in the year 2007, he was given promotion but he cannot be given promotion with retrospective effect.

The learned counsel has further argued that on the principle of laches, the learned High Court should have dismissed the case of the respondent at preliminary stage because the order of the competent authority fixing his pay, etc. was passed in the year 2001, which for the first time was challenged by the respondent through filing the Constitution Petition before the High Court, subject matter of instant proceedings, after a lapse of 9/10 years. He submits that if a party approaches the Court after the period of limitation or whose case is hit by laches, the Court has no jurisdiction to entertain the claim which has become barred by time. His submission is that in view of above, the respondent was not entitled to equitable relief sought after almost 10 years from the High Court.

In support of his submission regarding limitation that the same could not have been condoned by consent of the parties and the question of filing petition with the delay and to be hit by principle of laches, reliance has been placed on Ali Muhammad v. Muhammad Shafi (PLD

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1996 SC 292) and Chairman, State Life Insurance Corporation v. Hamayun Irfan (2010 SCMR 1495).

4. On the other hand, learned counsel appearing for the respondent submits that the question of laches cannot be raised by the appellant for more than one reason because it was never the case of the appellant before the learned Judge in Chambers of the High Court nor in the memo of the appeal as the same has been raised before this Court for the first time.

He submits that the respondent remained vigilant in pursuing his grievance though by making repeated representation, both against his suspension/dismissal and later on, after his reinstatement regarding fixation of his emoluments, etc. He states that the respondent filed Constitution Petition No. 18629 of 2010 before the High Court, which came up for hearing on 25-3-2010 and it was observed by the learned Single Judge in Chambers of the High Court as under:-

"(2) Both the counsel agree that let the petitioner file a representation to the competent authority in this behalf, who shall examine the same and decide the matter fairly, justly and strictly in accordance with law after affording full opportunity of hearing to the petitioner including the right of producing evidence.

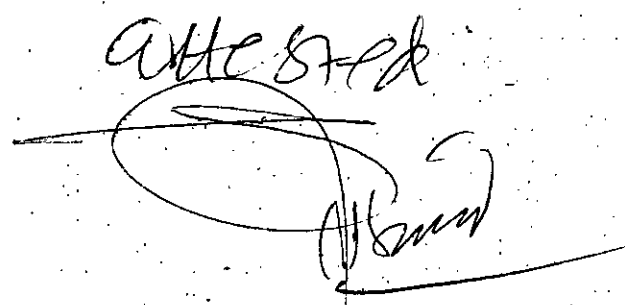
(3) Disposed of in the above terms with direction that the competent authority shall decide the matter expeditiously within three months of the receipt of such representation."

The learned counsel submits that in view of consent order, the respondent was to file a representation to the competent authority, which was accordingly filed but his representation was not entertained and he was advised by the department itself that he shall file an appeal, as envisaged under Regulation No.33 of the State Life Employees Service Regulations, 1973; thus, according to the learned counsel, no question of limitation or laches arises when the department i.e. the appellant itself has been asking the respondent to prefer an appeal pursuant to the consent order referred to hereinabove.

Qua the relief of pro forma promotion given to the respondent w.e.f. the date when his batch mates were promoted, the learned counsel has argued that same is his right because if the respondent was charged and was removed from service or if in the year 2002, his other colleagues were promoted, but because of deficiency of his ACR, his case was not considered, which fault could not be attributed to the respondent and relief in this regard has rightly been granted to him. He also states that the order of the competent authority dated 2-3-2001 exonerating the respondent from the charges levelled against him vide charge sheets dated 28-8-1996 and 10-9-1996, is a clear chit in his favour and would be considered as if he was never suspended nor dismissed and shall assume the position as was held by him, deeming him to be in service w.e.f. the date when the said two charge sheets were served upon him.

5. We have heard the arguments of the learned counsel for the parties and have also gone through different documents, so brought on record. Undisputed facts are that the respondent was issued two charge sheets mentioned in the preceding paras herein above, on the basis of which he was dismissed from service but was reinstated under the order of this Court with the directions that fresh enquiry should be held against him. In the later enquiry, the respondent was exonerated from the charges, which result of the enquiry was duly communicated to him vide letter dated 12-3-2001. The precise question before this Court is when an employee of the appellant was issued charge sheets, which charges were ultimately not proved and he was exonerated of the charges and that during the period he remained suspended or was dismissed, shall it adversely affect the service record of the respondent, both in terms of continuation of service and in terms of his right to receive pay and salary, etc.

6. Although the competent authority has held that the respondent be treated on duty for 56 days i.e. w.e.f. 8-5-1997 to 2-7-1997 and that the period from 9-6-1998 to 16-9-1999 (456 days) be treated as extra-ordinary leave but they have denied him salary for such period because he

Attested


physically remained out of service and, therefore, he was held not entitled to any pay for having done no work. The competent authority has also granted him two annual increments for the year 1999-2000 and 2000-2001 but denied him increments for the year 1999 and 2000, which became due on 1-1-2001. He was also refused pro forma promotion because of deficiency of his ACR for the year 2003.

7. Once an employee is reinstated in service after his exoneration of the charges levelled against him; the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/ duty because on the basis of charge sheets, he was suspended and later on dismissed. At the moment, his exoneration from the charges would mean that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the respondent and was due to steps taken by the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended nor dismissed.

8. So far as the question of laches is concerned, apparently the consenting order was passed by the learned Single Judge in Chambers of the High Court on 25-3-2011 where no question of laches was raised and subsequent thereto when the representation was filed by the respondent, he was advised by the department itself that he shall instead file an appeal and no question of laches was even raised by the departmental authority. Even before this Court except oral arguments in this regard, this question has not been setup specifically in the memo of appeal.

9. Argument of the learned counsel for the appellant that the order of the High Court is without jurisdiction on the ground that the matter was brought before it beyond the limitation and the High Court should have dismissed the petition in limine, does not appear to be a valid argument; limitation is a bar against a party in pursuing its cause and not bar regarding assumption of jurisdiction by a Court because the Court for justified reasons can condone the time limitation. Even otherwise, question of limitation is not involved in this case except laches as raised but since the department has never raised any objection of delay against the respondent in approaching the High Court, it cannot react against the respondent. Even otherwise, perusal of record reveals that the respondent had been pursuing his grievance qua re-fixation of pay and promotion, etc. throughout when he has filed his departmental appeal back in the year 2007 on 20th August.

10. For the above stated reasons, we find no force in this appeal, as such the same is dismissed; however, in para-14 of the impugned judgment it is recorded that "the period of 456 days as noted above is liable to be considered as a period "spent on duty" (emphasis provided); the said sentence is modified in the terms that it shall be read as "the period of 456 days as noted above is liable to be considered as a period "remained in service" (emphasis provided).

MW/C-2/SC

Petition dismissed.

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ANNEXURE-C

G.S.O. 20 RWMP 508 Z. S. 1,500 P. of 100 13-1-55--(12)

APPLICATION FOR LEAVE.

Note: Item 1 to 9 must be filled in by all applicants. Item 12 applies only in the case of Government servants of B.P.S.--16 and above.

- 1. Name of applicant. *SYED HASNAIN KAZMI*
- 2. Leave Rules applicable. *Civil Servant Revised Leave Rules 1981*
- 3. Post held. *Assistant Director (Senior)*
- 4. Department or office. *Local Govt. & RDO Haripur*
- 5. Pay. *Rs. 01,35,177 (net)*
- 6. House Rent Allowance/conveyance allowances or other compensatory allowances drawn in the present post. *Except conveyance Allowance*
- 7. (a) Nature of leave applied for. *Earned Leave on half pay.*
 (b) Period of leave in days. *120 days (04 months)*
 (c) Date of commencement. *Date of availing*
- 8. Particulars Rule/Rules under which leave is admissible.
- 9. (a) Date of return from last leave. *20/03/2016*
 (b) Nature of leave. *Extra-Ordinary Leave (Leave without pay)*
 (c) Period of leave. *1460 days (04 years)*

Dated. *27/03/2023*

Signature of applicant. *[Signature]*
Assistant Director
Local Govt. & RDO
Haripur

- 10. Remarks and recommendation of the Controlling Officer.
- 11. Certified that leave applied for is admissible under Rule.....and necessary conditions are fulfilled.

Dated.....

Signature.
Designation.

12. Report of Audit Officer,

Dated.....

Signature.
Designation.

- 13. Orders of the sanctioning authority certifying that on the expiry of leave the applicant is likely to the same post carrying the compensatory allowances being drawn by him. *Certified that there are (370) days leave (740 days on half pay) at his credit under the revised leave rules 1981.*

Dated.....

[Signature]

Signature.
Designation.
[Signature]
28/3/23
Distt: Accounts Officer
Haripur