

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 793/2016

BEFORE: **MR. KALIM ARSHAD KHAN ... CHAIRMAN**
MISS FAREEHA PAUL ... MEMBER(E)

Abdullah Rasheed, Lecturer Computer Engineering, presently posted at GATTC Hayatabad, Peshawar..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary to the Government of Khyber Pakhtunkhwa, Industries, Commerce & Technical Education Department, Peshawar.
3. Director, Technical Education & Manpower Training, Khyber Pakhtunkhwa, Peshawar. (Respondents)

Mr. Yasir Saleem,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution.....03.08.2016
Date of Hearing.....25.05.2023
Date of Decision..... 25.05.2023

JUDGEMENT


FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the notification dated 09.03.2016, whereby the appellant was awarded minor penalty of withholding of three annual increments for three years, against which his departmental appeal was not responded despite lapse of statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned notification dated 09.03.2016 might



be set aside and annual increments might be restored to the appellant with all back/consequential benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Lecturer (Computer Engineering) BPS-17, in the Directorate of Technical Education & Manpower Training, Khyber Pakhtunkhwa, Peshawar vide notification dated 2.11.2012 and was posted at Government College of Technology, Peshawar where he submitted his arrival report and started performing his duties. In order to improve his qualification, he applied for higher studies i.e M.S Mechatronics Engineering at National University of Science & Technology (NUST) and was accordingly selected for admission vide letter dated 19.08.2013. Before joining NUST, the appellant applied for NOC/departmental permission vide letter dated 15.05.2013 and also applied for study leave vide application dated 03.09.2013 which was duly forwarded by the Principal of the concerned college to the Directorate of Technical Education to the provincial government vide letter dated 30.10.2013 but the appellant was not informed about the outcome of his leave application in due time. In the meantime, the appellant's course at NUST, Rawalpindi started and he was constrained to join his studies. Since class timings of the appellant were from 5.30 PM to 8.30 PM, thrice a week, therefore, he also continued his duties at GCT, Peshawar and never remained absent from his official duties. Later on, he was served with a show cause notice containing certain allegations, as reproduced below:-

- i. *That you got admission in MS Mechatronics Engineering at NUST Islamabad without obtaining NOC of the department.*




- ii. *That while posted at Government College of Technology, Peshawar you remained absent from duty w.e.f 09.09.2013 to 08.09.2014, during your probation period of service which has been proved in the inquiry conducted by Engineer Sher Akbar Principal BS-20 Government College of Technology, Swabi.*
- iii. *That you did not join duty despite repeated explanation letters and warnings from the concerned principals and Director General Technical Education.*
- iv. *That during the period, you have drawn regular pay and allowances.*
- v. *That you attended the college concerned on 09.09.2014 and illegally/fraudulently included your name in the Attendance Register and also tried to mark yourself present for the entire period of absentee."*

The appellant duly replied to the show cause notice and refuted the allegations leveled against him. Without conducting regular inquiry, he was awarded the penalty of withholding three increments for three years. Feeling aggrieved, he filed departmental appeal which was not responded despite the lapse of 90 days statutory period; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that no proper procedure had been followed before awarding the penalty of withholding of increments upon the appellant. No charge sheet or statement of allegations had been served upon the appellant nor he had been



provided the opportunity to defend himself and hence the whole proceedings were defective in the eyes of law. He further argued that the appellant had never remained absent from his duties and regularly attended his classes which was evident from the attendance register of the college. He further argued that higher studies was the fundamental right of every citizen for which the appellant was selected and he duly applied for permission from the department before joining the classes. . He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that during short period of service, the Principal concerned had filed various complaints against the appellant for his willful absence from duty. He further argued that application of the appellant for leave was forward to the Administrative Department which was considered and rejected for the reason that the appellant was under probation and secondly he was not entitled for study leave for having deficient length of service. The appellant, without permission of the competent authority, joined the course at NUST Rawalpindi and it was proved during the inquiry that he remained absent from duty from 09.09.2013 to 08.09.2014. He requested that the appeal might be dismissed.

6. The appellant was appointed as Lecturer (BS-17) on 02.11.2012 and was on probation for one year. He applied for higher studies and was selected for NUST Rawalpindi vide their letter dated 19.08.2013. As the appellant was a civil servant, he was bound to seek permission and NOC from the provincial government before applying for the course at NUST.



When confronted with this question, learned counsel for the appellant stated that he applied for the said NOC as well as study leave. No application for NOC has been attached with the service appeal, however, an application for seeking study leave is available. Under the rules he had to wait for the permission from government, which he did not and joined the course at NUST Rawalpindi without such permission. As far as study leave is concerned, the appellant was on probation and did not have enough service at his credit to qualify him for study leave. Another point for consideration was sanction of station leave also as he had to travel to Rawalpindi three days of the week to attend the classes, which was not obtained.

7. Inquiry report annexed with the reply indicates that the appellant admitted that he was not issued the NOC for admission at NUST and that his application for study leave was rejected by the competent authority. He also admitted that he had not taken any station leave to attend the classes at Rawalpindi. Taking note of all these omissions, he was rightly proceeded against.

8. In view of the foregoing, the appeal in hand is dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 25th day of May, 2023.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman