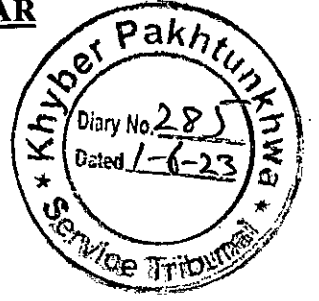


BEFORE THE HONOURABLE COURT OF WORTHY CHAIRMAN
KHYBER PAKHTOONKHWA SERVICES TRIBUNAL PESHAWAR

Civil Misc. Petition No. _____/2023

In

Service Appeal No. 727/2023



Dr. Javeria Haroon-----Appellant

VERSUS

Honourable Secretary of Higher Education, KPK and others-----Respondents

Service Appeal

**APPLICATION UNDER SECTION 5 OF THE LIMITATION ACT 1908 FOR
CONDONATION OF DELAY**

Respectfully Sheweth,

1. That the Applicant has filed Service Appeal before this Honourable Court and the contents whereof may graciously be considered as an integral part and parcel of this instant application.
2. That on getting belated information about missing (previously submitted to reporting officer) ACRs for the years 2017 and 2020 on 03-03-2021, the Appalpent resubmitted both ACRs on 04-03-2021 as well as ACR for the year 2021 on 21-12-2021 during COVID-19.
3. That the Appalpent was intimated about her below average ACR for the year 2017 (belated received on 19-04-2021) and average ACR for the year 2021 (belated received on 19-10-2022), but upto the chargin of the Applicant her both ACRs comprised of "Adverse Remarks" as well as her ACR for the year 2020 was average (belated letter dated 01-07-2021) during COVID-19.
4. That the Applicant moved the Departmental Expunge Appeal/Representation against the said ACRs, 2017 on 09-04-2021 and 2021 on 19-10-2022 soon after receiving letters as well as for upgradation of ACRs (2017, 2020, 2021) on 07-02-2023 and ACR (2022) on 27-02-2023 soon after knowledge, whereby, the Department still has maintained no response on all appeals with only verbal assurance and resultant loss of promotion deferment (BPS-19).
5. That the valuable rights of the Applicant are involved in the instant matter and if the delay is not condoned, the Applicant would likely to suffer an irreparable loss.
6. That despite verbal assurance, there was non-serving of written reply of Departmental Appeals for expunge of adverse and down graded ACRs wherein the factum of approval for expunge of ACRs was not denied rather supported by Department in notifications

Place on relevant files.

A
01/06/23

dated 04-11-2022, 23-11-2022, 25-11-2022, 28-11-2022 which remained one of the reason for wait above 120 days in misunderstanding and misconstruction of law with no redressal appeal in Honourable Service Tribunal till getting knowledge. Therefore, under Article 113 of Qanun-e-Shahadat Order, 1984, the Appellant is not required to prove the fact which was not disputed by authorities.

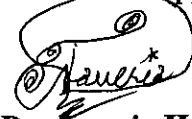
7. That the Appellant has to be informed of the fact and the reasons for with held and related ordered document, placed on record, if any, cannot be considered to have been placed on file in accordance with law especially when the Appellant has not been given opportunity to go through from it as due to non-reading of record, Appellant has not produced any such order. According to similar judgment of Apex Court as "No prejudice would be caused by filing of sanction subsequently before closing of case" based on non-serving of order.
8. That related order in original (if any) with consequential deferred promotion, and notification letters in Appeal are illegal and void and no limitation runs against illegal and such orders, hence appeal may be treated within time and condonation may be permitted as per previous judgements.
9. That due to some unprecedented/force majeure reasons, causes and circumstances beyond Applicant's control, she could not file the Service Appeal in time.
10. That the delay in filing the instant Service Appeal is neither deliberate nor intentional but rather the Applicant was buried under the workload of the home department.
11. That the Applicant/Appellant got leg and feet fractures and resultant surgery during COVID-19 dated 12-10-2020 and she remained under adverse effects for the last two and half years, therefore, could not file the Service Appeal in time.
12. That as per settled principle of provision of section 30 of the Khyber Pakhtoonkhwa Epidemic Control and Emergency Relief, the delay in filing of the Service Appeal on behalf of the Applicant holds enough water to be condoned and entertained.
13. That the ACRs notifications were misplaced in the personal record of the Applicant due to online promotion training (21-03-2021 to 22-04-2021) and suspension of work during COVID-19 (w.e.f. 13-03-2020) and traced again 20-12-2022.
14. That delay in filing the Service Appeal is owing to improper, disoriented, and misguidance as well as wronghead plea, and upon knowledge, Appellant's fresh representation was submitted to competent authority on 20-12-2023 and then on 11-01-2023 following proper channel to secure time on enforced existing right from the date of knowledge before the proper forum in, with no response even after passing stipulated time.
15. That the fresh appeal resubmitted via address to proper Appellant authority is not prone to be withheld as according to Section 6(b) of Service and Discipline Regulations, 1985. Moreover, if, the reason for "withholding" of Appeal was that it was beyond time, then, it would had allowed to be resubmitted within one month of the Appellant being informed, with no fear of withheld and must be proceeded to hearing on merit as per previous judgements. However, the question of limitation was not raised by department previously at any forum that must be observed under section 3 of the Limitation Act.

16. That no departmental appeal was disposed of by any order in writing holding the same as barred by time. According to earlier judgements, in such circumstances, "The question of condonation or otherwise in filing Appeal would not arise" rather "The said case would have been a fit case for condonation of delay".
17. That there is no legal hedge in allowing the instant application and neither any malafide nor the same can be attributed to Appellant in the light of submissions made.
18. That the balance of convenience and merit of case are in favour of the Applicant/Appellant and as per dictum of the Honourable Supreme Court, the merits of the case may not be scrapped or annulled on sheer technicalities of time limitation.

It is therefore, humbly prayed that instant application may kindly be accepted and the delay in filing the Service Appeal against adverse and downgraded ACRs (2017, 2020, 2021, 2022) may graciously be condoned in the proper interest of justice which requires that the lis between the parties be kindly be decided on merits rather than on hyperactive technicalities and the representation be perused for consideration.

Any other relief not specifically asked for which this Honourable Court may deem fit and proper, may also graciously be extended in favour of the Applicant in the circumstances of the case.

Yours' Humble Appellant,



Dr. Javeria Haroon

(By self)

Dated: 31-05-2023

AFFIDAVIT

I, Dr. Javeria Hroon, Assistant Professor of Chemistry, Higher Education Department (Colleges), Khyber Pakhtoonkhwa, do hereby solemnly affirm and declare on oath that the contents of accompanying Appeal are true and correct to the best of my knowledge, belief and information; and that nothing has been deliberately concealed from this Honourable Service Tribunal.



DEPONENT

CNIC# 13101-6504896-4

Cell# +92316-1899064

1 JUN 2023

**BEFORE THE HONOURABLE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 727 /2023

Dr. Javeria Haroon, Assistant Professor of Chemistry (BPS-18), Govt. Girls Post Graduate College (GGPGC) No. 1, Haripur.

.....Appellant

VERSUS

1-Honourable Prof. Dawood Khan, Secretary Higher Education, Khyber Pakhtoonkhwa, Civil Secretariat, Peshawar.

2-Honourable Prof. Faridullah Shah, Director of Higher Education and Controlling officer of ACRs/PERs, Department of Higher Education (Colleges), Khyber Pakhtoonkhwa, Peshawar.

3-Respected Prof. Khurshid Ahmed, x-Director of Higher Education and x-Controlling officer of ACRs/PERs, Department of Higher Education (Colleges), Khyber Pakhtoonkhwa, Peshawar.

4-Respected Additional Director (ACRs/PERs), Department of Higher Education (Colleges), Khyber Pakhtoonkhwa, Peshawar.

5- Respected Prof. (retd.) Subhanullah, x-Director of Higher Education, Department of Higher Education (Colleges), Peshawar.

6-Respected Prof. (retd.) Zahoor Ul Haq, x-Director of Higher Education, Department of Higher Education (Colleges), Peshawar.

7-Respected Prof. (retd.) Nasira Bano, x-Principal Govt. Girls Post Graduate College (GGPGC) No. 1, Haripur, Department of Higher Education (Colleges), Khyber Pakhtoonkhwa.

8-Respected Prof. Nighat Shaheen, Principal Govt. Girls Post Graduate College (GGPGC) No. 1, Haripur, Department of Higher Education (Colleges), Khyber Pakhtoonkhwa.

.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGAL AND UNLAWFUL ADVERSE REMARKS RECORDED IN THE ACRS/PERS OF THE APPELLANT FOR THE YEAR 2017, 2020, 2021 AND AGAINST NO ACTION TAKEN AFTER 120 DAYS ON THE DEPARTMENTAL APPEALS OF APPELLANT UPTO THE EXTENT OF UPGRADATION AND EXPUNCTION OF ADVERSE REMARKS RECORDED IN THE ACRS/PERS OF THE APPELLANT FOR THE YEAR 2017, 2020, 2021 AND 2022

PRAYER

Being aggrieved and dissatisfied with non-compliance of rules and regulations and no response of Appellant's all departmental appeals after passing 120 days except verbal assertion related to up gradation and expunction of ACRs/PERs (2017, 2020, 2021 and 2022), the Appellant prefers her appeal with most humble prayer that this Honourable Khyber Pakhtoonkhwa Service Tribunal may be pleased to;

ATTESTED
11/6/23