

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**AT CAMP COURT SWAT**

**Service Appeal No. 540/2023**

**BEFORE:** KALIM ARSHAD KHAN --- CHAIRMAN  
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Muhammad Jamal Son of Buzarg Muhammad Resident of Amankot  
Tehsil Babozai District Swat..... (*Appellant*)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education at Block-A Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa at Civil Secretariat at Peshawar.
3. Chairman Board of Intermediate & Secondary Education Saidu Sharif Swat at Kokrai, Saidu Sharif Swat.
4. Director Treasuries & Accounts Khyber Pakhtunkhwa at Peshawar.
5. District Controller of Accounts Swat at Saidu Sharif Swat.....(*Respondents*)

**Present:**

MUHAMMAD JAVAID KHAN,  
Advocate

--- For Appellant

FAZAL SHAH MOHMAND,  
Additional Advocate General

--- For respondents No. 1, 2 4 & 5

ZAHID KAKAKHEL,  
Advocate

--- For respondent No. 3

Date of Institution.....24.11.2022

Date of Hearing.....06.06.2023

Date of Decision.....06.06.2023

**JUDGMENT**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*“On acceptance of this service appeal, the impugned order No. SO (Estt-I) FD/1-4/2022 dated 25.10.2022 of the respondent No. 2 may kindly be set aside, and the appellant may be paid all the salaries and other emoluments for the period 24.06.2018 to 19.03.2019 as recommended by Respondent No. 5 vide letter dated 29.07.2022. Any other relief, deemed fit in the circumstances may also be awarded in favor of the appellant against the respondents.”*

02. Brief facts of the case are that the appellant is the permanent employee of Finance Department and presently working as Admin Officer (BPS-17) in the office of District Accounts Officer Saidu Sharif, Swat. That the appellant, while serving as Assistant Accounts Officers Swat, was posted as Audit Officer in the Board of Intermediate & Secondary Education, Saidu Sharif, Swat, on deputation basis, vide Notification dated 24.06.2015. After completion of deputation period of the petitioner, the Chairman (BISE), Swat wrote a letter to the Secretary Elementary & Secondary Education Khyber Pakhtunkhwa on 30.05.2018 informing him about completion of 3 years deputation period of the appellant with a request for further extension. The Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar solicited the opinion of the Secretary to Government of Khyber Pakhtunkhwa, Finance Department through letter dated 13.06.2018. In response to the said

letter, the Secretary to Government of Khyber Pakhtunkhwa, Finance Department through letter dated 27.06.2018 conveyed his no objection for extension of deputation for further two years of the appellant but the respondent No. 3 was reluctant to release his pay and other emoluments. Feeling aggrieved, the appellant filed Writ Petition No. 782-M/2018 before the Hon'ble Peshawar High Court, Mingora Bench, (Dar-ul-Qaza), Swat on 07.08.2018. The said Writ Petition was dismissed vide judgment dated 19.03.2019. After dismissal of the said Writ Petition, the appellant submitted his arrival report on 22.03.2019 in the office of respondent No. 5. That on 22.03.2019 the appellant applied for the salaries of the period for 24.06.2018 to 19.03.2019 on the basis of judgment of Peshawar High Court, Mingora Bench, (Dar-ul-Qaza) Swat dated 07.08.2018 and 17.10.2018. The appellant filed departmental appeal which was rejected on 25.10.2022, hence preferred the instant service appeal on 24.11.2019.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned salaries pertain to the period during which the Writ Petition No. 782-M/2018 of the appellant was pending before the Hon'ble Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. That there was no

negligence on the part of the appellant due to pendency of the matter before the Hon'ble Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. That the impugned order has been issued in violation of the judgment of Supreme Court of Pakistan reported as SCMR 2007 Page 537 and 2007 PLC (C.S) 560. That the appellant has a very good service record and has performed his duties honestly and regularly hence the appellant is entitled for his salaries for the period from 07.08.2018 to 19.03.2019. That the appellant has not been treated in accordance with law, he concluded.

05. Learned Additional Advocate General on behalf of respondents No. 1, 2, 4 & 5 and Legal Advisor for respondent No. 3 contended that the appellant instead of performing his duties, enjoyed the French Leaves and dragged the matter to litigation despite the fact that his services were no more required to the borrowing department. He further contended that no duty had been performed by the appellant either at borrowing department or parent department. Lastly, he submitted that the appellant had been treated as per law, rules and policy. Therefore, he requested for dismissal of the instant service appeal.

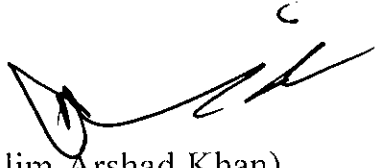
06. Record reveals that the appellant, after completion of his three years deputation, was relieved by the borrowing department on 26.06.2018. He approached the Hon'ble Peshawar High Court Mingora Bench (Dar-ul-Qaza), Swat for extension of his deputation period for another two years on the ground that NOC was issued by the parent department (LENDING Department) of the appellant. The appellant got

an interim relief from the Hon'ble Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat vide order dated 07.08.2018. However, on 18.03.2019, the Hon'ble Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, dismissed the Writ Petition of the appellant on the ground that he had concealed the fact of his repatriation notification and relieving by the borrowing department.

07. The facts of the matter narrated above lead us to the conclusion that the appellant was required to report to his parent department for duty after his relieving order and repatriation notification, which he failed to do for the period from 24.06.2018 to 19.03.2019. The absence of the appellant for the above period could not be plausibly explained by him except his saying that he was granted interim injunction by the Hon'ble Peshawar High Court but the Hon'ble Peshawar High Court while dismissing the Writ Petition of the appellant has found that the appellant had obtained an interim injunction by concealing the facts. When the conduct of the appellant was so unbecoming and when there is unexplained absence of the appellant for the above period, his claim made in the appeal, could not be granted. We do not find any ground for interference of this Tribunal in the matter of further posting of the appellant by his parent department and treating the intervening period, which he himself did not report for duty i.e. "24.06.2018 to 19.03.2019" and as such the appeal stands dismissed. However, the appellant may make an application to the authority for considering his request for treating the period from 24.06.2018 to 22.03.2019 as leave of the kind

due, which if moved may be taken up by the competent authority as per relevant rules. Consign.

08. *Pronounced in open court at camp court Swat and given under our hands and seal of the Tribunal this 06<sup>th</sup> day of June, 2023.*



(Kalim Arshad Khan)  
Chairman  
Camp Court, Swat



(Muhammad Akbar Khan)  
Member (I)  
Camp Court, Swat