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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7713/2021

BEFORE: **MR. KALIM ARSHAD KHAN ... CHAIRMAN**
MRS. RASHIDA BANO ... MEMBER(J)

Asmat Ullah Khan S/O Rasool Bacha R/O Village Malagay Banda, P/O Sabir Abad, Tehsil & District Karak.

.... (*Appellant*)

Versus

1. **Secretary** Higher Education Department Khyber Pakhtunkhwa, Peshawar.
2. **Director** Higher Education Khyber Pakhtunkhwa, Peshawar.
3. **Principal** Government Post Graduate College, Karak.
.... (*Respondents*)

Mr. Taimoor Haider Khan
Advocate

...

For appellant

Mr. Muhammad Jan
District Attorney

...

For respondents

Date of Institution.....18.10.2021
Date of Hearing.....16.06.2023
Date of Decision..... 16.06.2023

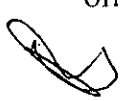
JUDGEMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 25.07.2016, whereby the appellant has been terminated from service with the sole reason of having willful absence by not seeking permission/NOC regarding post graduate study (Ph.D) abroad. Despite the fact the appellant was assured that he, without any worry the Ph.D via scholarship, may complete at Brazil.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Lecturer Biology vide notification dated 28.06.2013, through Khyber Pakhtunkhwa Public Service Commission in Post Graduate College Karak. Due to his qualitative skills and experience the appellant tried his level best to keep the moral of the college high and was having unblemished service record. The appellant having M.Phil Degree was wishing to have post qualification and for that purpose the appellant submitted application to the respondents to get NOC in order to accomplish Ph.D degree. It is also indispensable to mention here that exactly on the same footing, other colleagues of the appellant had also applied for getting NOC, but without deciding the fate of application they had proceeded abroad and during their study abroad their applications for NOC were allowed. In the meanwhile, the appellant was successful to get scholarship for higher studies in one of the reputable University of Brazil but unfortunately, the respondents were dilly dallying to give proper NOC via study leave for higher education. Hence, the appellant was in doldrums, as the time of higher studies was about to vanish. The appellant being on equal footing proceeded abroad and successfully did Ph.D degree in the year 2009. After completion of degree, the appellant came to know that he was removed from service vide notification dated 25.07.2016, against which he filed departmental appeal on 02.08.2019, which was regretted on 21.08.2019, hence, the present service 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 and perused the case file with connected documents in detail.

4. Learned counsel for the appellant contended that the appellant had not been treated in accordance with law and rules. He further contended that without any sort of explanation, inquiry, intimation letter, he was removed from service violating the supreme principle of "Audi Alteram Partem" and the appellant was discriminated despite the same benefit had been extended to the rest of colleagues of the appellant, he therefore, requested for acceptance of the present service appeal.

5. The learned District Attorney argued that the appellant was not entitled for study leave and as a civil servant, he was required to wait for the permission/sanction of his leave but he proceeded abroad without waiting for the decision of Competent Authority. He contended that the appellant was appointed in the respondent department in the year 2013 and as per rules, he was not entitled for study leave as for study leave minimum 5 year service was required, hence, study leave was not admissible to him. Lastly, he submitted that after fulfillment of all codal formalities, he was removed from service.

6. Case of the appellant is that he proceeded abroad for higher education without getting NOC, although he applied for the same but without waiting for issuance of the NOC he went abroad. When he came back after completion of Ph.D degree, he came to know that he was removed from service without calling for explanation, inquiry and intimation letter by violating the principle of "Audi Alteram Partem". The appellant, due to his removal from service, was shocked



and was mentally strained due to which he indulged in dilapidated health condition of having life threatening diseases of back bone as a result of which he was on bed for more than two years and after recovery from illness, he filed departmental appeal, which was not responded by the respondents.

7. Admittedly services of the appellant were removed by the order 25.07.2016, while appellant filed departmental appeal on 28.06.2021, copy of which is annexed with the instant appeal, wherein he requested for restoration of his job by declaring his removal notification dated 25.07.2016 as null and void and considering duration of his absence as study leave without pay. As per Rule-3 of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, a civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms & conditions of his service may file departmental appeal/representation within 30 days but appellant filed departmental appeal with a considerable delay of 4 years and 11 months. It is well entrenched legal proposition that where appeal before departmental authority is time barred, the appeal before service Tribunal would be incompetent. In this regard reference be made to case titled Anwarul Haq Vs. Federation of Pakistan 1995 SCMR, 1505, Chairman, PIAC v. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others 2004 SCMR 1426. Although was shown to have filed and received but no seal of official is available which could be established that appellant had in fact filed departmental appeal and this makes filing of departmental doubtful.

8. Appellant brought instant appeal on 18.10.2021, while by contending that departmental appeal has not yet been decided but respondent categorically denied



from factum of filing of the departmental appeal by the appellant therefore in such situation if it is considered that no departmental appeal is filed by the appellant, then the appeal in hand was filed after considerable delay of 5 years and 2 months, so application for condonation of delay is of no help to him because appellant will has to plausibly explanation of each and everyday in case of delay in filing of appeal which is missing in the instant case.

9. In view of the above discussion, both departmental representation as well as this appeal are hopelessly barred by time, therefore, appeal of the appellant is dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of June, 2023.*



(RASHIDA BANO)
Member (J)



(KALIM ARSHAD KHAN)
Chairman