

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT

Service Appeal No. 307/2018

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Muhammad Jamil, Ex-CT, G.I.S Adam Dherai, Dir Lower.
..... (Appellant)

Versus

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director of Education (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The Executive District Officer (E&SE), Dir Lower.

..... (Respondents)

Mr. Atta-Ur-Rehman,
Advocate

... For appellant

Mr. Muhammad Jan,
District Attorney

... For respondents


Date of Institution..... 26.02.2018

Date of Hearing..... 03.07.2023

Date of Decision..... 03.07.2023

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 order dated 14.05.2012 whereby the appellant was removed from service and order dated 17.11.2017 whereby the departmental appeal of the appellant against the order dated 14.05.2012 was rejected. It has been prayed that on acceptance of the appeal, the impugned orders dated 14.05.2012 and 17.11.2017 might be set aside and the respondent department might be directed to reinstate the appellant with



all back and consequential benefits alongwith any other remedy, which the Tribunal deemed fit and appropriate.


2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Education Department as Certified Teacher in the year 1999. A post of Research Officer (BPS-17) was advertised in the Project "Monitoring of Crops through Satellite Technology" in Agriculture, Livestock & Cooperative Department. The appellant, being eligible, applied for the said post through proper channel and was appointed as Research Officer (BPS-17) vide order dated 14.03.2011. The SUPARCO called nomination from Khyber Pakhtunkhwa Agriculture, Livestock and Cooperative Department. The name of the appellant was sent to SUPARCO for nomination vide letter dated 06.08.2013 by the department and he was nominated by SUPARCO for Master Degree programme on 15.01.2014. The appellant relinquished the charge in Agriculture, Livestock & Cooperative Department and went to China on 19.09.2014. While studying in the said course, he was informed through mail by SUPARCO to come back to Pakistan on 20.09.2016, due to which he returned to Pakistan on 30.09.2016 and submitted his charge report in the Agriculture Department on 04.10.2016 but his charge report was not accepted for the reason that his service contract was not extended by the competent authority since 01.07.2015 and he was no more an employee of that department. He was further informed that his nomination for study abroad and study leave case was under trial and investigation in the NAB and a call up notice was also issued to him on 07.10.2016. He appeared before the NAB authorities;



however, no action was taken on the call up notice till the filing of the service appeal. He also submitted application to NAB authorities for his clearance on 07.07.2017. The appellant filed application on 08.03.2017 to the Secretary Agriculture Department for extension in service as Research Officer (BPS-17) w.e.f. 01.07.2015 on which opinion was sought from the Establishment Department who, vide letter dated 24.05.2017, opined that admissibility of any kind of leave was not covered under the Project Policy, 2008. The appellant then submitted an application to the DEO (M) Dir Lower on 16.05.2017 for grant of extraordinary leave w.e.f 15.03.2012 and adjust him on his post as CT, but no action was taken on his application. When he visited the DEO office on 25.09.2017 to know about the fate of his application, he was handed over order dated 14.05.2012, whereby he was removed from service from the date of his absence, alongwith the show cause notice. Feeling aggrieved, he filed departmental appeal on 27.09.2017 which was rejected on 17.11.2017, however it was not communicated to him, therefore, he filed application to RTI for provision of rejection order on which the Directorate (E&SI) provided a copy of rejection order vide letter dated 29.01.2018; hence the present appeal.

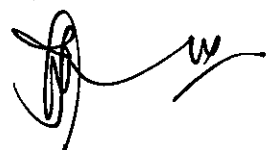
3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, contended that the impugned orders dated 17.11.2017 and 14.05.2012 were



against the law, rules and material on record, therefore, liable to be set aside. He further argued that no charge sheet and statement of allegation was served upon the appellant. In the show cause notice it was mentioned that the competent authority dispensed with the inquiry against the appellant but without showing any reason which was violation of Rule 7 of the Government of Khyber Pakhtunkhwa Civil Servants (E&D) Rules, 2011. According to him, the appellant had applied through proper channel for the post of Research Officer (BPS-17) and after his appointment, he regularly performed his duty in Agriculture, Livestock & Cooperative Department and had never remained absent from duty. 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 the appellant had moved an application dated 15.03.2011 for leave without pay w.e.f. 16.03.2011 to 14.03.2012, wherein it was stated that his father passed away during the previous year and performing of duty was difficult for him and therefore requested for leave without pay which was allowed with a condition that he would not join other organization during that period. According to the learned District Attorney, the appellant concealed the fact from his department about his appointment in the Agriculture Department as Research Officer. He further argued that after expiry of leave, he was required to report for duty but he failed to do so, hence show cause notice was served upon him on 20.03.2012 but no response was received nor he reported for duty and after observing all the codal formalities, he was



removed from service vide order dated 14.05.2012 due to his willful absence from duty w.e.f. 15.03.2012. He requested that the appeal might be dismissed.

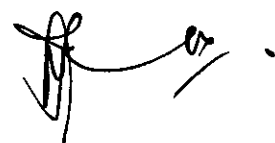
6. Arguments and record presented before us reveal that the appellant, while serving in the Elementary and Secondary Education Department as Certified Teacher since 1999, applied for a post of Research Officer (BPS-17) advertised by the Government of Khyber Pakhtunkhwa, Agriculture, Livestock and Cooperative Department in 2011. He was selected for that position on contract basis, as it was a project post. The appellant joined that position and started performing his duties there. The appellant has not annexed any NOC issued by his parent department i.e Elementary & Secondary Education Department for joining the new assignment in Agriculture and Livestock Department. It was further noted that he left his parent department where he was holding a regular post for joining another department on a post which was a project post on contract basis. From there, he left for China to pursue his studies and that too without informing and getting approval from his parent department.

7. From the record provided by the respondents, it was found that the appellant applied for leave of one year on the ground that after the death of his father, being the eldest member, he had to look after his family matters. His leave, as requested, was approved with effect from 16.03.2011 to 14.03.2012 (364 days) and his sanction order clearly mentioned that he will not join other organization during his leave period. When we look into the factual position, the appellant joined the Agriculture & Livestock



Department, in pursuance of their Notification dated 14.03.2011, as Research Officer (BS- 17), without bringing it to the notice of his parent department, thus concealing the facts. After expiry of his leave period on 14.03.2012, he had to join his duty in the I&SE Department on 15.03.2012, but he failed to do so and got his name processed for a degree programme in China and left for abroad in September 2014. Throughout this time, he never brought any matter into the knowledge of his parent department. He came back from China in 2016 after completing his studies and submitted his charge assumption report upon which he was informed that his service contract in the Agriculture Department had not been extended from 01.07.2015 and therefore he was no more their employee. It was after that rejection that he approached the District Education Officer, Dir Lower and in his application, he admitted that he failed to join his service after expiry of sanctioned leave on 14.03.2012; but before that the EDO, Dir Lower had already initiated disciplinary action against him and removed him from service vide order dated 14.05.2012. Before passing that order, a show cause notice was issued on 20.03.2012, to which the appellant did not respond.


8. From the above discussion, it is abundantly clear that the appellant was guilty of misconduct when he concealed the facts from his parent department and joined another department despite clear directions in his leave sanction order. Another blatant violation of rules committed by him was leaving the country to pursue higher education in China without letting his department know and getting proper NOC from them. Even his




application submitted to the DEO (M) Dir Lower on 16.05.2017, mentions “unavoidable severe problems” whereas perusal of the entire case reveals that nothing was “unavoidable”, rather all the matters were in the hands of the appellant and he deliberately concealed the facts from his higher ups in the Elementary and Secondary Education Department.

9. In view of above, the appeal in hand is dismissed with cost. Consign.

10. *Pronounced in open court at Camp Court Swat and given under our hands and seal of the Tribunal this 03rd day of July, 2023.*


(FARIEHA PAUL)
Member (E)
(Camp Court, Swat)


(SALAH-UD-DIN)
Member (J)
(Camp Court, Swat)

Fazle Subhan, P.S