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REGISTERED
No. C.P.546/2021 - SCJ
SUPREME COURT OF PAKISTAN

Islamabad, dated 06-10-2023

From The Registrar,
Supreme Court of Pakistan,
Islamabad.

To The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Khyber Pakhtunkhwa Service Tribunal
Diary No. 8218
Dated 10/10/2023

Subject: CIVIL PETITION NO. 546 OF 2021

Ghansham Das
Versus
Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others

On appeal from the Judgment/Order of the Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 21/12/2020 in A.-876/2019.

Dear Sir,

I am directed to enclose herewith a certified copy of the Judgment of this Court dated 14/09/2023 dismissing the above cited case in the terms stated therein for information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Judgment:

Yours faithfully,

(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

99/23

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masood
Mr. Justice Amin-ud-Din Khan
Mr. Justice Syed Hasan Azhar Rizvi

(AFR)
Civil Petition No.546 of 2021

[Against the judgment dated 21.12.2020 of the Khyber Pakhtunkhwa Service Tribunal, Islamabad in Appeal No.876 of 2020]

Ghansham Das

...Petitioner(s)

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary, Pakistan Forest Institute, Peshawar and others

...Respondent(s)

For the Petitioner(s)	:	Dr. G.M. Chaudhry, ASC along with petitioner in person
For Respondents (1-3)	:	Mr. Sultan Mazhar Sher Khan, Additional A.G. KP Atif Majeed, Dy. Director Technical Pakistan Forest Institute
For Respondents (4-6)	:	Malik Javed Iqbal Wains, Additional Attorney General Mohsin Saleem Ullah, A.D. (Legal)M/o IT & T
Date of Hearing	:	14.9.2023.

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through this petition, filed under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (**the Constitution**), the petitioner has challenged the judgment dated 21.12.2020 (**impugned judgment**) of the Khyber Pakhtunkhwa Service Tribunal, Peshawar whereby the service appeal filed by the petitioner under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 was dismissed.

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2. Before delving into the intricate details of the case, let us first provide a concise overview of the key facts and events as per the petition that set the stage for these legal proceedings.

The petitioner was formally appointed as an Assistant Composite Wood Officer (BS-17) in the Pakistan Forest Institute, Peshawar' ("**PFIP**") with effect from 14.01.2008 *vide* Notification No.1(21)/2008-A-III(PFI) dated 30.06.2008 of the Ministry of Environment, Government of Pakistan. Due to life threats from the Taliban, the petitioner was transferred and posted as Section Officer (BS-17), Ministry of Environment, on deputation basis, for a period of three years *vide* Notification No.F.4/48/2009-OMG-II dated 31.10.2009 of Cabinet Secretariat, Establishment Division, Government of Pakistan. Meanwhile, the Constitution (Eighteenth Amendment) Act, 2010 was passed and the Ministry of Environment was devolved to the Provinces; resultantly, the PFIP was devolved to the Government of Khyber Pakhtunkhwa (**KPK**) on 30.06.2011 along with entire staff irrespective of their province of domicile and even without affording them any option or choice *vide* Notification No.3-45/2011-Admin-I dated 30.05.2011.

3. After devolution, the petitioner was never asked to join the PFIP under the Administrative control of the Government of KPK and continued to serve as a Section Officer (BS-17) in the Ministry of Environment. Later, his services were placed at the disposal of the Petroleum and Natural Resources Division *vide* Establishment Division's Notification No.F.1/13/2008-OMG-II dated 12.02.2011. Subsequently, he was transferred and posted as a Section Officer in the Ministry of Information Technology *vide* Notification No.1-128/2012-Admn. dated 19.04.2012. The petitioner was repatriated to

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his parent department PFIP with immediate effect *vide* Notification No.F.4/48/2009-OMG-II dated 19.11.2013 of the Cabinet Secretariat Establishment Division, Government of Pakistan. However, this notification was withdrawn subsequently *vide* Notification No.F.4/48/2009-OMG-II dated 01.01.2014. The petitioner was again repatriated to his parent department *vide* notification dated 24.02.2015 of the Establishment Division (Management Services Wing), Government of Pakistan. The petitioner impugned this Notification by filing a constitution petition under Article 199 of the Constitution before the Islamabad High Court, Islamabad but could not succeed. An Intra court appeal as well as Civil Petition for leave to appeal filed by the petitioner also met the same fate.

4. Meanwhile, the Government of KPK on 10.12.2015, initiated a disciplinary inquiry against the petitioner for his alleged willful absence from duty and issued him a charge sheet with the statement of allegations. Finally, the petitioner was removed from service *vide* Notification SO(Estt)/FE&WD/V-13/2015 dated 09.11.2018 (**impugned notification**) of the Forest, Environment & Wildlife Department, Government of KPK. The petitioner filed a service appeal/representation against the impugned notification before the competent authority but the same was not decided within the stipulated period. The petitioner as such preferred an appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned notification but failed; hence, this petition.

5. The learned counsel for the petitioner has argued that the KPK Service Tribunal while passing the impugned judgment could not properly have appreciated that a civil servant could not at

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his sweet will relinquish the charge of his office unless allowed by the Competent Authority and in the case of the petitioner the Ministry of Information Technology continuously communicated with the Establishment Division as well as the PFIP and in such circumstances there was no justification for initiation of disciplinary proceedings against the petitioner.

Further argued that the learned tribunal did not consider that the petitioner was proceeded against ex-parte and was not afforded the opportunity of personal hearing as required under Article 10-A of the Constitution while he was performing duties in the Ministry of Information Technology of the Federal Government; hence, there was no need to get publish notices in the newspapers. The PFIP could have only made a request to the Ministry of Information Technology to relieve the petitioner from his duties to join PFIP or the Government of KPK or the inquiry committee may request the said Ministry to relieve the petitioner. Whereas, the petitioner continuously informed the PFIP about the developments of extensions of his deputation period as well as threats being faced by the petitioner due to which he was unable to join the PFIP at the cost of his life.

Adds that the petitioner is a victim of arbitrariness, *mala fides*, organizational mismanagement and improper perception of provisions of the law between the Federal Government and the Government of KPK after the devolution of function and powers under the Constitution (Eighteenth Amendment) Act, 2010, which resulted in the removal from service of the petitioner.

Lastly argued that the petitioner has already attained the status of a Federal Government employee prior to the issuance of the

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impugned notification in terms of the Civil Servant (Amendments) Act, 2016 and as such the PFIP could not initiate an inquiry against him.

6. Conversely, the learned Law Officers (except respondent No.5) strongly supported the impugned judgment and notification and contended that it deserves to be upheld calling for no interference therein. However, Ministry of Information Technology (respondent No.5) by filling a separate CMA supported the version of the petitioner with the assertions that the PFIP, an attached department of the defunct Ministry of Environment, was devolved to the Government of KPK under the Constitution (Eighteenth Amendment) Act, 2010. The PFIP issued letter No.759/F.I(Per)-Estt, dated 29.05.2014 and No.923/F.1(Per)-Estt dated 23.06.2014 to the petitioner to report for duty at PFIP. Later, the Ministry of Information Technology, through an office memorandum dated 22.10.2014 to the Devolution Cell of the Defunct Ministry of Environment Cabinet Division requested to allow the petitioner to continue his services in the Federal Secretariat in the public interest. Further asserted that the Ministry of Information Technology management did not relieve the petitioner because the working of the Ministry in general and the development wing, in particular, could have been seriously impacted.

7. We have heard the rival submissions of the learned counsel for the petitioner as well as the learned Law Officers and perused the relevant material available on the record.

8. After the Constitution (Eighteenth Amendment) Act, 2010, the Federal Secretariat was reorganized and the office/organization of Pakistan Forests Institute, Peshawar along with

its employees were transferred to the Government of KPK on deputation basis under section 10 of the Civil Servant Act, 1973. In this regard, a formal Notification No.3-45/2011-Admn-I dated 30.05.2011 was issued by the Ministry of Environment, Government of Pakistan and a list of the transferee employees was also attached thereto wherein the name of the present petitioner was mentioned at serial no.35 with the designation as "Assistant Composite Wood Officer (Presently serving as Section Officer in Federal Secretariat on deputation basis". Nonetheless, the petitioner did not assume the charge of his duties at PFIP under the above-mentioned notification as he, at that time, was serving as a Section Officer in the Ministry of Environment. on deputation basis, for a period of three years, *vide* Notification No.F.4/48/2009-OMG-II. dated 31.10.2009 of Cabinet Secretariat Establishment Division, Government of Pakistan.

9. Meanwhile, the Environment Department, KPK wrote a letter to the Federal Government *qua* the clarification of the status of the above employees transferred by it as a sequel to the devolution under the Constitution (Eighteenth Amendment) Act, 2010. The response of the Federal Government regarding the status of the said employees was conveyed to the Environment Department through the Establishment & Admin. Department (Regulation Wing) of the Government of KPK *vide* Notification No.SO(O&M)E&AD/1-19/2010-Vol-IV dated 13.12.2011 in the following terms:

> *"As a result of devolution, all the employees of devolved Ministries/Departments have been posted in Federal/Provincial/AJK Governments on deputation under section 10 of the Civil Servant Act, 1973. As decided by the Federal Cabinet, legislation for permanent absorption of these employees is yet to be processed. In the meantime, the employees of the devolved Ministries/Departments shall continue to*

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work on deputation for the period as admissible under the rules.

Since, the employees of PFI are on deputation, therefore, rules & regulations pertaining to their service are governed by rules and regulations of the Federal Government and such like cases may be referred to Establishment Division for further disposal."

10. Deputation within a government department holds a significant role, necessitating recruitment under exceptional circumstances when there is a lack of expertise within the department in the relevant subject or field. In such situations, the prescribed procedure outlined in Rule 20-A of the Civil Servants (Appointment, Promotion, and Transfer) Rules, 1973, must be adhered to. However, it is imperative to emphasize that deputation should not entail an indefinite period of service but should conform to the specified duration for the deputation. The normal period of deputation is three years and the concerned officer has to report back after completion of his three years period unless it has been extended to further two years and the maximum period is five years in terms of Serial No.27 (iv) of ESTA Code Volume-I (Civil Establishment Code), whereby both the borrowing and lending organization should ensure immediate repatriation of the deputationist. Furthermore, the period of deputation has to be defined specifically and after expiry of the said period, the officer should automatically be relieved from his office duties, unless his period has been extended. The other pre-conditions of deputation referred in Chapter III (Transfer, Posting, and Deputation) of the ESTA Code, are as under:

(i) *Where a post proposed to be filled is reserved under the rules for departmental promotion, appointment on deputation may be made only if the department certifies that no eligible person is available for promotion or the eligible person is found unfit for promotion by the appropriate DPC/Selection Board. In*

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such cases, deputation may be approved till such time a suitable person becomes available for promotion.

(ii) In case of posts reserved for initial recruitment, appointment on deputation may be made only as temporary arrangement, pending joining of the nominee of the FPSC, and subject to the condition that such appointment shall be made only after a requisition has been placed with the FPSC.

(iii) In cases where a post is tenable through appointment by deputation, the normal period of deputation should be three years and no extension beyond three years may be allowed without prior approval of the Establishment Division.

(iv) No officer should be sent on deputation unless he has completed three years' service in his parent department after return from an earlier deputation."

11. We may mention here that the deputationist by no stretch of the imagination and in the absence of any specific provision of law can ask to serve the total period of deputation and he can be repatriated being a deputationist by the Competent Authority in the interest of exigency of service as and when so desired and such order of the competent authority cannot be questioned. The Civil Servants Act, 1973 and the rules made there-under as well as ESTACODE are silent about the fact that a deputationist must serve his entire period of deputation and this omission seems deliberate enabling the Competent Authority to utilize the service of an employee in the manner as it may deem fit and proper. The period of deputation can at best be equated to that of an expression of the maximum period which can be curtailed or extended by the Competent Authority and no legal or vested rights whatsoever are available to a deputationist to serve his entire period of deputation in the borrowing Department. In this regard, we are fortified by the dictum laid down by this Court in the cases reported as *Zain Yar*

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Khan v. Chief Engineer (**1998 SCMR 2419**); *Aslam Warraich v. Secretary, Planning and Development Division* (**1991 SCMR 2330**); *Pakistan v. Fazal-ur-Rehman* (**PLD 1959 SC (Pak.) 82**); *Ashraf Khan Niazi v. Chairman Board of Governors Allama Iqbal Medical College* (**2003 PLC (C.S.) 243**); *Dr. Shafi-ur-RehmanAfridi v. C.D.A* (**2010 SCMR 378**) and *S. Masood Abbas Rizvi v. Federation of Pakistan* (**2014 SCMR 799**).

12. In this case, the initial deputation period of 3 years of the petitioner was expired on 01.11.2012. From the record, it is evident that a process was started for the extension of the deputation period but was not extended further by the competent authority. The law is very much clear in this regard that on the last date of the specified period, the officer should automatically stand relieved of his duties unless the orders of the competent authority have been obtained in advance for extending the period. *(See Serial No.28-A of the ESTACODE Volume-I (Civil Establishment Code).* The PFIP, no doubt, made constructive efforts by issuing letters No.759/F.I(Per)-Estt, dated 29.05.2014, and No.923/F.1(Per)-Estt dated 23.06.2014 to apprise the petitioner about the afore-noted legal position *qua* expiry of his initial period of deputation and to direct him to report for duty at PFIP but he omitted to join his duty for no reason. Later on, the petitioner, by virtue of newly added sub-sections (3), (4), (5) & (6) of section 3 *vide* Civil Servants (Amendment) Ordinance, 2013 promulgated on 24.05.2013 and followed by the Civil Servants (Amendment) Act 2016, assumed the status of the civil servant of the Government of KPK. Being so, the petitioner, for the first time, was officially repatriated to his parent department PFIP with immediate effect by the Cabinet Secretariat, Establishment Division, Government of Pakistan *vide* Notification No.F.4/48/2009-OMG-II

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dated 19.11.2013 after promulgation of above Ordinance; however, this notification was withdrawn subsequently *vide* another Notification No.F.4/48/2009-OMG-II dated 01.01.2014. Nevertheless, the petitioner was again repatriated to his parent department *vide* notification dated 24.02.2015 of the Establishment Division (Management Services Wing), Government of Pakistan. Instead of joining his parent department i.e. PFIP, the petitioner opted to impugn the above Notification of his repatriation by filing a constitutional petition under Article 199 of the Constitution before the Islamabad High Court, Islamabad but could not succeed. An Intra court appeal as well as a Civil Petition for leave to appeal filed by the petitioner also met the same fate.

13. Having exhausted all the available legal recourses, the parent department, on 10.12.2015, rightly initiated a disciplinary inquiry under Rule 10(1)(a) of the Government Servants (Efficiency & Discipline) Rules, 2011 against the petitioner for his alleged willful absence from the duty by issuing him a charge sheet with a statement of allegations. Proceedings under Khyber Pakhtunkhwa Government Servants (E & D) Rules, 2011 (**E & D Rules**) were duly undertaken and in compliance with the requirements contained in Rule-9 thereof show cause notices were published in the daily newspapers namely, *'Mashriq'* and *'Aaj'* dated 31.08.2018 and 01.09.2018, respectively. The inquiry culminated in the petitioner's removal from service, as indicated in the Notification No.SO(Estt)/FE&WD/V-13/2015 dated 09.11.2018 (**impugned notification**) of the Forest, Environment & Wildlife Department, Government of KPK. We have carefully scanned the available record and did not find any illegality or irregularity in the inquiry proceeding conducted by the parent department.

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14. Further, it is imperative to consider another pivotal facet of this issue, which is: that the learned Tribunal, no doubt, aptly noted the intricate issue of limitation *qua* the filling of service appeal before it; yet chose to exercise restraint by refraining from deciding the said issue. Nevertheless, we would not hesitate to pass an observation thereon for amplification of this issue of limitation. The record transpired that the removal order of the petitioner was issued on 09.11.2018. The petitioner competently filed the departmental representation/appeal thereagainst on 20.11.2018 within thirty days as provided under Rule 17 of the E & D Rules. Rule 19 (2) of the E & D Rules further provides that: "*if a decision on a departmental appeal or review petition, as the case may be, filed under rule 17 is not communicated within period of sixty days of filing thereof, the affected Government servant may file an appeal in the Khyber Pakhtunkhwa Province Service Tribunal within a period of ninety days of the expiry of the aforesaid period, whereafter, the authority with whom the departmental appeal or review petition is pending, shall not take any further action.*"

15. Indeed, the decision on the representation/ departmental appeal filed on 20.11.2018 under the above rule 17 was not communicated to the petitioner till 19.01.2019 i.e. the expiry of sixty days from the date of filing of the representation/appeal by the petitioner. In this eventuality, the petitioner, under Rule 19(2) *supra*, could have filed the service appeal before the Service Tribunal within the next ninety days i.e. starting from 20.01.2019 till 19.04.2019. It is a matter of record that the petitioner had filed the service appeal before the learned Service Tribunal on 03.07.2019, a duration exceeding two and a half months beyond the expiration of the prescribed limitation period. Being so, the service appeal of the

petitioner is hopelessly time-barred and is liable to be dismissed on this score as well.

16. Keeping in mind the above facts and circumstances and after careful consideration of the impugned judgment, this Court finds the impugned judgment to be a well-reasoned and judiciously crafted decision. The learned Service Tribunal, in its meticulous analysis of the relevant legal principles and available facts, has arrived at a sound and well reasoned conclusion that is legally sound and just. And, these peculiarities establish beyond any doubt that the case in hand does not involve any substantial question of law of public importance that calls for interference by this Court.

17. Foregoing in view, the leave is refused and the petition is dismissed. No order as to costs.

Islamabad,
the 14th September, 2023
Not approved for reporting