

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service appeal No. 1379/2023

Abdul Saboor.....Appellant


Versus

Govt. of Khyber Pakhtunkhwa through Secretary (Health
Department) & others..... Respondents

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23-11-23



Admin officer
Independent Monitoring
Unit Health Department
Khyber Pakhtunkhwa

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA

Khyber Pakhtunkhwa
Service Tribunal

SERVICE TRIBUNAL PESHAWAR

Case No. 9251

SERVICE APPEAL NO. 1379 OF 2023

Date: 20-11-2023

Abdul Saboor..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa through Secretary Health and
others..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 01 TO 04

Respectfully Sheweth:

Preliminary Objections:-

1. That the appellant has got no cause of action or locus standi to file the instant appeal.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in its present form and also in the present circumstances of the issue.
5. That the appellant has filed the instant appeal with mala-fide intention hence liable to be dismissed.
6. That the appellant has not come to this Honorable Tribunal with clean hands.
7. That the appeal is barred by law and limitation.
8. That the instant appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
9. That the instant appeal has been filed in violation of section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.

ON FACTS:

1. Pertains to record.
2. Pertains to record.
3. Incorrect. The appellant did not get N.O.C/prior permission before getting admission abroad. It is further to clarify that mere submission of an application for leave is not sufficient. The appellant was required to wait for the decision/approval of the competent authority as granting leave is the prerogative/discretion of the competent authority under section 18 of the Khyber Pakhtunkhwa civil servant Act 1973.

4. Subject to prove, however detail reply has been given in para-3 above.
5. Pertains to record, however the appellant got admission abroad without N.O.C/Prior permission of the competent authority. Furthermore the appellant himself admitted the fact in the preceding paras that without N.O.C/prior permission/Approval of the competent authority the appellant proceeded abroad therefore he committed gross misconduct
6. Pertains to record. However detail reply has been given in the preceding paras.
7. Incorrect. The para is misleading, concocted and based on mis-statement, infact the honorable court directed the respondent No. 01 for decision of his departmental appeal with respect to his adjustment, however it is worth to mention that a fact finding inquiry with respect to his absence from duty was conducted by the competent authority in which it was proved that the appellant absented himself from his official duty since 09/09/2017 without any permission and got admission abroad without any N.O.C/Prior Permission of the competent Authority and further concealed his official status in his passport and left Pakistan therefore the competent authority issued a show-cause notice under Rule 5(1)(a) read with rule 7 of the Khyber Pakhtunkhwa govt servants (efficiency and disciplinary)rules 2011 wherein regular inquiry was dispense with which was duly replied by the appellant in which he did not refute the allegation in the show-cause notice rather admitted the same in his reply to the show-cause notice thus after providing an opportunity of personnel hearing to the appellant on 21/11/2022. The competent authority (Director IMU) Health department vide office order dated: 13/02/2023 imposed major penalty of removal from service on the appellant. Copies of the show-cause notice, reply of the appellant and removal order dated: 13/02/2023 are already annexed with the appeal however copy of the fact finding inquiry report is (A).
8. Already replied in para-7 above.
9. Correct to the extent of removal order dated: 13/02/2023, detail reply has been given in para-7 above.
10. Pertains to record. However, the appellant even did not deny the allegations mentioned in the show-cause notice in the departmental appeal as well as the instant appeal therefore neither the departmental appeal nor did the instant appeal is maintainable.
11. Incorrect. No vested right of the appellant has been violated by the replying respondents.

ON GROUNDS:

- A. Incorrect, the replying respondents acted as per law, rules and principles of natural justice while issuing the impugned order dated: 13/02/2023.
- B. Incorrect. Already replied in para-A above.
- C. Incorrect. The impugned order has been issued after fulfilling all the codal formalities under the Khyber Pakhtunkhwa efficiency and disciplinary Rules 2011, he was issued a proper show-cause notice under Rule-5, read with Rule-7 of the ibid Rules 2011 by dispensing with the regular inquiry. It is worth to mention the apex court has held that long absence outside Pakistan needs no regular inquiry, reliance is placed on 2022 PLC CS SC 132, 2023 PLC CS SC 283. The Apex Court has already held that when absence is admitted there is no need of regular inquiry. Reliance is placed on 2021 SCMR 144, 2021 PLC CS SC 385, 2021 SCMR 959.
- D. Already replied in the preceding paras. A civil Servant is required to get higher education or proceed on leave after getting proper N.O.C/Prior permission of the competent authority. However the appellant did not bother to obtain prior permission of the competent authority.
- E. Already replied in Para-C above.
- F. Incorrect. Already replied in Para-A above.
- G. The replying respondents also seek prior permission of this Honorable Tribunal to adduce other grounds during final hearing of the case.

PRAYER:

It is therefore humbly prayed that on acceptance of the comments, the instant appeal of the appellant may very graciously be dismissed with costs.

Divisional Monitoring Officer (IMU)
Malakand at Swat
(Respondent No. 03)

Director IMU
Khyber Pakhtunkhwa Peshawar
(Respondent No. 02)

Secretary to Govt. of
Khyber Pakhtunkhwa Health Department
(Respondent No. 01)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

In Service Appeal No. 1070/2023

Mr. Abdul Saboor

.....Appellant

VERSUS

Govt. of KPK, through Secretary Health Department & others

.....Respondents

AFFIDAVIT

I, independent monitoring unit health department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath respondent that the contents of para wise written comments are true and correct to the best of my knowledge and behalf of that a nothing has been concealed from this Hon'ble court.

It is state on oath that in this appeal the insuring respected were neither been placed Ex-parte not their defense has been struck off

Dated: 16-11-2023

DEPONENT

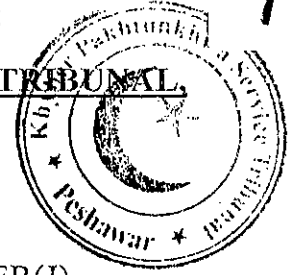
for 

Director

Independent Monitoring Unit
Health Department Khyber
Pakhtunkhwa

Dr. Syed Ijaz Ali Shah





BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 6585/2021

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Mr. Abdul Saboor, Data Collecting Assistant (BPS-16), under control of Divisional Monitoring Officer, Malakand Division at Head Office D.G Health Department, Peshawar..... (*Appellant*)

VERSUS

1. The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, Health Services Department, Khyber Pakhtunkhwa Peshawar.
3. The Director, Independent Monitoring Unit, Health Department, Peshawar.
4. The Divisional Monitoring Officer (IMU) Health Department, Malakand-I at Shaheed Abad near Sohrab Khan Chowk, Mingora, Swat.
5. The Secretary, Finance Department, Khyber Pakhtunkhwa, Peshawar.
6. The District Accounts Officer, District Shangla.
7. The District Monitoring Officer, (IMU) Health Department Shangla..... (*Respondents*)

Present:

MIR ZAMAN SAFI,
Advocate --- For Appellant.

MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General, --- For respondents.

Date of Institution.....14.06.2021
Date of Hearing.....21.09.2022
Date of Decision.....21.09.2022

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted with the prayer that "on acceptance of

to accept the arrival report of the appellant and adjust him against the post of Data Collecting Officer (BPS-16) as well as release the monthly salaries of the appellant w.e.f 09.09.2017 till date alongwith all consequential benefits.”


02. Brief facts of the case, as averred in the memorandum of appeal, are that the appellant was initially appointed as Data Collecting Assistant (BPS-16) in project/ADP Scheme on 18.02.2015 whose services were regularized alongwith others under the Khyber Pakhtunkhwa Employees of Health Department (Regularization of Service) Act, 2017 vide Notification dated 30.06.2017. The appellant being aspirant for higher studies, submitted an application for grant of three years study leave on 18.08.2017 which was not decided by the competent authority and he proceeded in pursuit of higher studies to China. On return from China, he submitted arrival in the department on 04.08.2020 and requested for acceptance of his arrival report and resumption of duty but to no avail till submission of the service appeal in Service Tribunal on 14.06.2021.

03. On admission of the service appeal in preliminary hearing on 09.08.2021, the respondents were put on notice to submit written defense through reply/para-wise comments. Reply/Parawise comments were submitted on 09.05.2022. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents in Divisional

ATTESTED

Bench and gone through the record thoroughly with their valuable assistance today.

04. Learned counsel for the appellant contended that the appellant is a regular employee of the department since 30.06.2017 who had applied for Phd course and the University of Jiangsu (China) sent him letter of admission on 16.08.2017. The appellant applied for the grant of three years study leave on 18.08.2017 but due to inaction of the department, the study leave could not be granted and the appellant proceed abroad for higher studies on 09.09.2017. The appellant even from China was in touch through e mail and tried to pursue his case regarding grant of study leave in the department. It was further argued that due to the outbreak and spread of COVID-19 worldwide, all universities were closed down in China but the appellant by then had completed his course work required for the award of Phd Degree. On his arrival in the country, the appellant submitted arrival report in the department on 04.08.2020. However, since then the department is indecisive as a result of which he is neither adjusted nor he is paid monthly salary w.e.f. 09.09.2017. Moreover, the indecisiveness is an act on part of the respondents which is not only against the law, facts, norms of natural justice, material on record but is also in violation of Article 4 and 25 of the Constitution. The department has neither conducted any enquiry on arrival of the appellant nor passed any adverse order and the appellant has been kept in hanging position. While

ATTENDED

Sd/-
Secretary

concluding his arguments, he requested for acceptance of the appeal as prayed for.

05. Learned Assistant Advocate General controverted arguments of the learned counsel for appellant and contended that the appellant had never applied for NOC to proceed for study abroad and he left the duty station without approval/sanction of Ex-Pakistan Extra ordinary leave. Not only this, the appellant left the country on a passport in which he concealed his occupational status as government servant so as to misguide and dodge the Law Enforcement Agencies. Moreover, the appellant is not a committed person to his job who on arrival in the country, did not apply for joining his duty immediately but waited till expiry of the leave period he had allegedly applied for. He is, therefore, not entitled for salary on the basis of fundamental principle of "no work, no pay." He further argued that the appellant did not extend co-operation to the enquiry committee and after putting appearance only once, he disappeared and did not reply to nor appeared before the fact finding enquiry committee since December 2020. This shows the carelessness and casual attitude of the appellant who is habitual to tangle and involve the honourable court in non-issues. The appeal may therefore, graciously be dismissed with costs, he concluded.

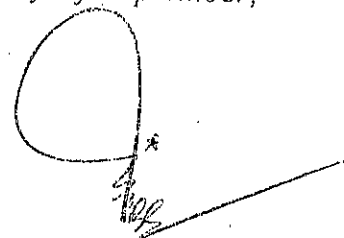
06. It is evident from the record and an admitted fact by both the sides that the appellant proceeded abroad in pursuit of higher Education. On return from China, the appellant submitted

ATTESTED
By
Sd/-
Assistant Advocate General
Service Division
2022

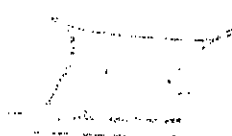
arrival report to respondent No. 7 (District, Monitoring Officer IMU Health Department, Shangla) on 04.08.2020 for rejoining his duty in the department. He submitted another application for the purpose, to respondent No. 3 (Director, IMU Health Department, Peshawar) on 29.09.2020 requesting therein to allow him to resume his duty but the respondent department did not pass appropriate orders on his departmental appeal.

07. In the circumstances, we consider it appropriate to remit case back to the department for decision on the departmental appeal of the appellant in accordance with relevant law/rules through a speaking order within 30 days of receipt of the copy of instant judgement. Parties are left to bear their own costs. File be consigned to record room.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 21st day of September, 2022.*



(MIAN MUHAMMAD)
MEMBER (E)



(SALAH UD DIN)
MEMBER (J)

Certified to be true copy
EX-100
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 26-10-22
 Number of Words 2000
 Copying Fee 200/-
 Urgent
 Total 200/-
 Name
 Date 01-11-22



INDEPENDENT MONITORING UNIT
HEALTH DEPARTMENT
GOVERNMENT OF KHYBER PAKHTUNKHWA

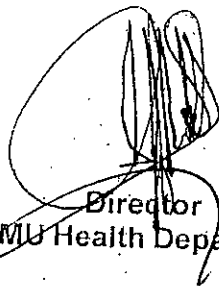
Dashboard: www.imuhealthkp.com

Website: www.imuhealthkp.gov.pk

Office: House # 3, Safi Homes, Canal Road, University Town, Peshawar

AUTHORITY LETTER

Mr. Akhunzada Tahir Azeem, Admin Officer having CNIC Number # 17301-1562354-1, Independent Monitoring Unit (IMU) Health Department is hereby authorized to attend/defend the Court Cases and file comments on behalf of Director, Independent Monitoring Unit Health Department, Govt. of Khyber Pakhtunkhwa before the Honorable Peshawar High Court and its benches in the Province as well as Lower Courts & Khyber Pakhtunkhwa Service Tribunal Peshawar.


Director
IMU Health Department



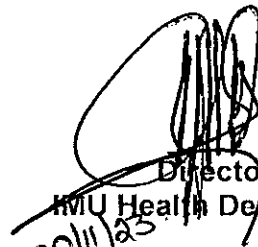
**INDEPENDENT MONITORING UNIT
HEALTH DEPARTMENT
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Telephone: 091-5710717

Office Address House # 3 & 4 Pawaki Canal Road, Peshawar.

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Director
IMU Health Department
20/11/23