

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

CM. No. /2023

In

Service Appeal # 99/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9770

Dated 8-12-23

Muhammad Saleem,Appellant.

VERSUS

Education DepartmentRespondents.

REPLY OF APPLICATION FOR RETENTION OF LEIN TILL THE DISPOSAL OF APPEAL


Respectfully Sheweth,

The Respondents submitted as under:-

1. That the above mentioned application is pending before this Honorable Service Tribunal.
2. That the maximum lien period of three years of the applicant was expired on 05-05-2023.
3. That the applicant utilized maximum period of lien i.e three years and there is no provision/concept of further extension of lien beyond three years in the existing service Laws/Rules/Policy/Notifications/Orders etc of Khyber Pakhtunkhwa. (Relevant portion of Khyber Pakhtunkhwa Esta Code is attached as Annex-A)
4. That further extension of lien beyond the maximum period of three years will be tantamount to re-writing/addition to prevailing Civil Service Laws/Rules and hence this Honorable Tribunal has no jurisdiction to entertain such kind of application.

Prayer:-

In view of the above submissions, it is, therefore, most humbly requested that as the instant application is devoid of merit and against the prevailing Service Laws/Rules/Government Orders. Therefore, the same may kindly be dismissed.


Secretary
Elementary & Secondary Education
Department (Respondents No.1, 2)

Molasim Billah

Lien: Means the title of a Government servant to hold a permanent post in a substantive capacity.

General Principles: -

- * Two or more Government servants cannot be appointed substantively to the same permanent post at the same time.
- * A Government servant cannot be appointed substantively, except as a temporary measure, to two or more permanent posts at the same time.
- * If a Government servant holds a lien on a certain posts, no other Govt. servant can be appointed substantively to that post.
- * There is only one substantive holder of a given permanent post.
- * When a Government servant is going to be confirmed in a certain post, he should exercise option that he agrees to the termination of his lien on any other permanent post held by him in a substantive capacity.

Retention of Lien: -

Substantive holder of a permanent post retains lien in the following cases: -

- * While performing the duties of that post.
- * While on Foreign Service, or holding a temporary post, or officiating in another post.
- * During joining time on transfer to another post.
- * During suspension.
- * During leave.

Suspension of Lien: -

a (Compulsory) : A competent authority shall suspend the lien of a government servant holding a permanent post substantively when ever he is appointed in a substantive capacity to a tenure post or to a pennant post outside the cadre or if he is appointed provisionally against a post on which another Government servant holds a lien.

b (Optional): The competent authority may also, at his option, suspend the lien of a Govt. servant holding a pennant post substantively if he is deputed out of Pakistan or goes on foreign

service, or is transferred in a substantive or officiating capacity to a post in another cadre, provided that in all the above cases, the period is not less than 3 years.

Revival of Lien: -

The Suspended lien will revive as soon as the Government servant ceases to hold a lien against any of the posts in (a) or (b).

Termination of Lien: -

*A substantive holder of a pennant post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

*If appointed to a pennant post, his lien on tenure post must be tenanted.

*On appointment to the posts of Chief Engineer or Governor, their lien on pennant posts must be tenanted.

* When Chief Engineer takes leave immediately on vacating his office or post, he shall be left without lien on any other pennant post.

*When appointed to a pennant post outside the cadre on which he is borne, his lien or suspended lien on his previous post can be tenanted on the written request of the Government servant concerned and not otherwise.

could not be withheld even when their work and conduct during the probationary period had been unsatisfactory. Government are gravely perturbed over this situation and have decided to make it obligatory on the Administrative Departments/ Appointing Authorities to pass an order on the completion of the initial probationary period, either (i) confirming the probationer; or (ii) extending the period of probation or (iii) dispensing with his services, if he was appointed by initial recruitment or (iv) reverting him to his former post, if he was appointed otherwise and if there is no such post dispensing with his services. In case the period of probation is extended, it would be binding on the Administrative Department/ appointing authorities to issue another order before the expiry of the extended period of probation, either confirming the officer or reverting him.

2. I am to add that Government would take serious notice of non observance of these instructions and would take disciplinary action against the officers found responsible for not complying with them.

3. This letter will take effect from 1st January, 1968. In the meantime in all pending cases of the past appropriate orders may be passed.

(Authority:- S&GAD's letter No.SOXII(S&GAD)2-133/63, dated 7.10.67)

Retention of Lien

Under the existing rules, lien of a civil servant can only be retained if he is a confirmed employee and is working against a permanent post. Despite completing the extended period of probation, the Government servants are not being confirmed for obvious reasons for no fault of theirs. As a matter of principle a regular Government servant who has completed his prescribed period of probation inclusive of the extended period of probation has a right to be confirmed.

2. It has been brought to the notice of this Department that a large number of unconfirmed employees on their selection for different jobs in Government and Autonomous Organizations ask for retention of lien and right of reversion to their parent Departments which is not permissible presently. Resultantly such employees hesitate to join the service elsewhere.

3. Keeping in view the acute un-employment in the country in general and in NWFP in particular it has been decided to give right of reversion initially for two years extendable by a further period of one year if a request in this behalf is received from those employees who are selected for appointment under Federal and other Provincial Governments provided they have served on regular basis for at least two years or who have completed the extended period of probation but could not be confirmed for obvious reasons.

(Authority:-S&GAD's letter No.SORI(S&GAD)1-62/80, dated 17.4.1989)

Confirmation of Lien

I am directed to refer to the subject noted above and to state that the lien of a civil servant accrues when he is appointed substantively against a permanent post. Substantive appointment means confirmation. The confirmation of a Government servant in a cadre can