

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 4900/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Dr. Najma Saher, wife of Mr. Hidayat Ali, R/O House No. 157, Sector E-3, Phase 1, Hayatabad. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Higher Education, Archives & Libraries Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Secretary Finance Department, Government of Khyber Pakhtunkhwa, Peshawar.
4. Accountant General Khyber Pakhtunkhwa, Peshawar.
5. Section Officer (Colleges-I) Higher Education, Archives & Libraries Department, Government of Khyber Pakhtunkhwa, Peshawar.
6. District Account Officer Khyber, Jamrud, Government of Khyber Pakhtunkhwa.
7. Director Higher Education, Peshawar.....(Respondents)


S. Haziq Ali Shah, ... For appellant
Advocate

Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

Date of Institution.....	19.04.2021
Date of Hearing.....	18.12.2023
Date of Decision.....	18.12.2023

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 11.12.2020, whereby the appellant was directed to deposit salaries drawn w.e.f 21.01.2020 to 18.10.2020 in the government treasury against which her departmental appeal dated 17.12.2020 had been regretted vide order dated 24.03.2021. It



had been prayed that both the impugned original order dated 11.12.2020 and appellate order dated 24.03.2021 might be set aside and the period of leave from 21.01.2020 to 18.10.2020 be treated as leave on full pay, as the appellant had sufficient balance in her leave account, alongwith any other remedy which the Tribunal deemed appropriate.

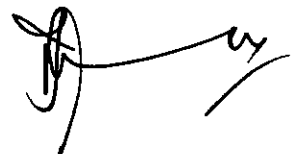
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Education Department in the year 1994 and was serving in BPS-20. She had 27 years service at her credit and was lastly posted as Principal, Government Girls Degree College, Jamrud District Khyber. She planned on visiting her immediate family, including her husband and son in the United Kingdom, in the early 2020. Vide application dated 28.11.2019, addressed to respondent No.5, the appellant sought ex-Pakistan leave w.e.f 01.01.2020 to 31.12.2021 (2years) on the following terms:

- i. From 01.01.2020 to 31.12.2020 on half pay, and
- ii. From 01.01.2021 to 31.12.2021 without pay.

The application was accompanied by a leave admissibility report dated 22.11.2019 signed and verified by respondent No.4 according to which she had 226 days of earned leave on full pay available at her credit. Vide notification dated 27.12.2019, respondent No.2 approved the grant of 24 days ex-Pakistan leave (without pay) w.e.f 28.12.2019 to 20.01.2020. Vide application dated 13.03.2020, addressed to the Higher Education Department, Khyber Pakhtunkhwa, the appellant applied for leave




preparatory to Retirement (LPR) w.e.f 13.03.2020 but no response was received. Vide letter dated 20.06.2020, addressed to respondent No.2, the appellant sought extension of ex-Pakistan leave w.e.f 20.01.2020 to 01.09.2020, as she was unable to travel back to Pakistan due to the Covid-19 global pandemic, but no reply was received from respondent No.2. Vide letter dated 18.07.2020, addressed to respondent No. 5 by the appellant, she applied for LPR with effect from 01.09.2020 with further request that the period w.e.f 21.01.2020 to 31.08.2020 (224 days) be considered as ex-Pakistan leave with pay but there was no reply. She, vide letter dated 22.09.2020, addressed to respondent No.2, stated that she had bought a ticket for a flight back to Pakistan and would re-join her duties w.e.f 07.10.2020. Appellant also requested that the period between 01.01.2020 to 06.10.2020 be treated as leave without pay but there was no reply from the respondent No.2. Subsequently, vide notification dated 11.12.2020, respondent No. 2 sanctioned the appellant's ex-post facto ex-Pakistan leave, without pay, w.e.f 21.01.2020 to 18.10.2020 and she was directed to deposit all salaries drawn w.e.f 21.01.2020 to 18.10.2020 in the Government Treasury within a period of one month from the date of the said notification. Aggrieved of the said notification, the appellant filed departmental appeal/representation dated 17.12.2020 before the competent authority seeking conversion of leave without pay into leave with pay which was not considered by respondent No.2 and vide letter dated 24.03.2021, the respondent No.3 rejected her appeal; hence, the instant service appeal.



3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy 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, argued that the appellant had an unblemished service record throughout her career of more than 26 years. He further argued that at the time of requesting for leave, the appellant had 237 days leave on full pay at her credit but respondent No.2 totally ignored the fact and impugned notification was issued without giving any opportunity of being heard to the appellant. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that leave admissibility report provided by District Accounts Officer, Jamrud was not correct. He argued that as per her personal file, service history and detail of leave record, the appellant had 22 days earned leave in her leave account. He further informed that the appellant submitted a simple application dated 13.03.2021 wherein she requested for pre-mature retirement and Leave Preparatory to Retirement (LPR) w.e.f 13.03.2020, without providing the requisite documents. The same was received in the office of respondent No. 07 in June, 2020 and the office of respondent No. 07 vide letters dated 03.06.2020, 29.06.2020 & 07.08.2021 asked for the required documents but the same were not provided and instead she requested for extension in Ex-Pakistan leave w.e.f 21.01.2020 to 31.08.2020 and requested for LPR w.e.f



01.09.2020. The learned DDA stated that as per rules, she was bound to resume her duty on 21.01.2020, after expiry of Ex-Pakistan leave, as there was no restriction on flights at that time but she remained willfully absent from 21.01.2020 to 18.10.2020 and was also drawing her salary of the said period illegally. Letters dated 12.03.2020, 29.06.2020 and 16.09.2020 were sent at her home address to report but she did not resume her duty. As far as her departmental appeal was concerned, the learned DDA stated that the same was considered and was found that she was not entitled to leave with pay. According to him, there was contradiction in two admissibility reports, in one it was reported that 226 days earned leave was available at her credit while in the other it was reported that the appellant was entitled for 4 days earned leave only after accounting for all the leave availed by her. After her last leave sanctioned up to 18.10.2020, the appellant submitted her arrival report dated 19.10.2020 to the office of respondent No. 7 on 11.03.2021 which reflected her non serious and irresponsible attitude toward her service. After submission of arrival report, the appellant was temporarily adjusted at Government Girls Degree College, Chagharmatti vide office order dated 12.03.2021 but she did not take charge of her duty and upon permanent adjustment vide notification dated 15.06.2021, she took her charge on 06.07.2021 but again remained absent from duty w.e.f 19.10.2020 to 14.06.2021, for almost 7 months. He requested that the appeal might be dismissed.

6. From the arguments and record, presented before us, it transpires that the appellant while serving as Principal Government Girls Degree College,



Jamrud applied for ex-Pakistan leave for two years w.e.f 01.01.2020 to 31.12.2021, with the request to treat half of it on half pay and the other half without pay, based on a certification of Audit Officer that a total of 226 days of earned leave on full pay was available at her credit. Her application was processed and the competent authority sanctioned 24 days ex-Pakistan leave, without pay, w.e.f. 28.12.2019 to 20.01.2020 in her favour. Based on that sanction, she had to report back on 21.01.2020, but instead of that she first forwarded an application dated 13.03.2020 to the Director Higher Education requesting for premature retirement on completion of 25 years government service and Leave Preparatory to Retirement from 13.03.2020. According to the respondents, for processing that application the appellant was requested to provide certain documents through three letters but she failed to comply. Through another application dated 20.06.2020, addressed to the Secretary Higher Education, the appellant requested for extension in ex-Pakistan leave on the ground that she could not travel back to Pakistan due to restrictions imposed in the wake of global pandemic. Requests for premature retirement dated 18.07.2020 and 22.09.2020 are also available on record. At a later stage, in October 2020, she came back to join her duty. Through a notification dated 11.12.2020, her 271 days absence was regularized and converted to ex-Pakistan leave, without pay, w.e.f 21.01.2020 to 18.10.2020. She was further directed to deposit the salaries of that period in the provincial exchequer within one month.

7. After going through the details of the entire case, it is evident that being a civil servant whose services are governed under a set of rules, the




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18th Dec. 2023 01. S. Haziq Ali Shah, Advocate Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, the appeal in hand is dismissed. Cost shall follow the events. Consign. .

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of December, 2023.*


(FAREEHIA PAUL)
Member (I)


(RASHIDA BANO)
Member (J)

Fazal Subhan PS

appellant was bound to report back to her duty after expiry of her sanctioned leave but she miserably failed to do so. It has further been noted that instead of requesting for extension in her leave immediately towards expiry of the sanctioned leave, the appellant applied for premature retirement and that too after passage of almost two months, which shows her disinterest towards her job. Record produced before us shows that she applied for extension of Ex-Pakistan leave in June 2020, after five months of expiry of sanctioned leave. By not reporting back on 21.01.2020, the appellant was guilty of misconduct under the rules, but the administrative department took a lenient view and, instead of proceeding against her, issued the ex-post facto sanction and regularized her absence.

8. In our opinion, the administrative department is justified in treating the absence period as leave without pay because the appellant was not only absence from duty without sanctioned leave but also out of country without a proper NOC of the government.

9. In view of the above discussion, the appeal in hand is dismissed. Cost shall follow the events. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of December, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)