

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1283/2013

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MISS FAREEHA PAUL ... **MEMBER(E)**

Said Karim (Ex-CT) R/O Kula Dher, Tehsil & District Charsadda.
..... (Appellant)

Versus

1. Secretary Elementary & Secondary Education KPK, Peshawar.
2. Director Elementary & Secondary Education KPK, Peshawar.
3. District Education Officer, Elementary and Secondary Education, District Peshawar.
4. Principal, Government High School, PAF Shaheen Camp Peshawar.
..... (Respondents)

Mr.Ibad Ur Rehman
Advocate

... For appellant

Mr.Habib Anwar
Additional Advocate General

... For respondents

Date of Institution..... 19.08.2013
Date of Hearing..... 03.01.2024
Date of Decision..... 03.01.2024

JUDGEMENT

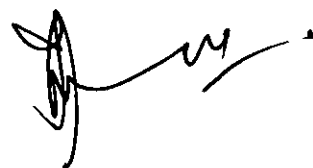
FAREEHA PAUL, MEMBER (E):The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 26.03.2013. It has been prayed that on acceptance of the appeal, the impugned order dated 26.03.2013 issued by respondent No.3, might be set aside and the appellant be re-instated in service with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was performing his duties as Certified Teacher (C.T) since



1995 and was posted at Government High School PAF Shaheen Camp, Peshawar. His wife was also a teacher, who was granted a scholarship for doing her M.Phil and she proceeded to the United Kingdom for the said purpose. The wife of the appellant faced difficulties while living in the United Kingdom alone and there was a handicapped son of the appellant also, therefore she applied for spouse visa, which was accordingly allowed. The appellant applied for Ex-Pakistan leave with effect from 01.09.2010 to 31.08.2012, which was granted vide order dated 15.09.2010 and he proceeded to the UK. After successful completion of her M. Phil, wife of the appellant sought permission to complete her Ph.D, which was allowed and stay at UK was extended to 2014. For completion of her Ph.D, the UK government extended not only the visa of wife of the appellant but also extended the visa period of the appellant and his children also. Appellant applied, from abroad, for extension of his leave which was rejected by the respondent about which he came to know through his own sources. He was left with no other option but to come back to Pakistan and join his duties. On 02.04.2013, the appellant came back to Pakistan and on the very next day, he reported his joining to the Principal of the school (Respondent No.4) where the appellant was informed that the he had been removed from service vide order dated 26.03.2013. He submitted a departmental appeal dated 23.04.2013 to the respondent No.2, but there was no response; hence the instant service 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 Additional Advocate General for the respondents and perused the case file with connected documents in detail.

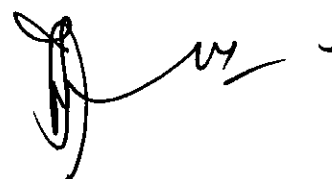
4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order of dismissal dated 26.03.2013 was illegal, harsh and without lawful authority. According to him, the procedure under the rules was not followed as neither a charge sheet or statement of allegations was served upon the appellant nor any show cause notice or final show cause was served upon him before issuance of the dismissal order. He argued that no proper inquiry in the matter had been conducted and no chance of personal hearing was ever provided to him. He further argued that it was an admitted fact that the appellant was abroad but not single try was made to send any notice whatsoever at the address of the appellant at United Kingdom. He requested that the appeal might be accepted as prayed for.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was granted ex-Pakistan leave w.e.f 01.09.2010 to 31.08.2012, vide order dated 15.09.2010 and he was supposed to resume his official duty on 01.09.2012, which he did not do. He was served with show cause notice dated 09.01.2013 on his postal address as Mahallah Taj Abad P/O University Town Peshawar received on 22.01.2013 by his father. The learned AAG informed that a final show cause notice through daily Surkhab Peshawar dated 27.02.2013 was also served upon him with the direction to resume his official duty & explain his position with regard to his willful absence, within 15-days, but he failed to respond. He contended that the appellant



was removed from service after observing all legal formalities. He further informed that application for extension of leave of the appellant was declined by the competent authority due to acute shortage of teaching staff. Learned AAG referred to a judgment of the August Supreme Court of Pakistan reported as 2021 SCMR 144 and argued that the absence of the appellant was an admitted fact in the light of which the appeal might be dismissed.

6. Arguments and record presented before us shows that the appellant, while serving as Certified Teacher at Government High School, PAF Shaheen Camp, Peshawar went abroad after getting his ex-Pakistan leave sanctioned w.e.f 01.09.2010 to 31.08.2012, out of which 374 days leave was granted on half pay and 356 days was without pay. He had to join his duty on 01.9.2012, but instead of reporting back, he requested for extension of leave for another three years, w.e.f 01.09.2012 to 31.03.2015, which was not sanctioned by his competent authority. It appears, from the arguments as well as the record, that the appellant neither pursued his request for extension of leave nor kept himself abreast of the decision taken on it and absented himself from his lawful duty after expiry of his sanctioned leave. He was served show cause notice at his home address in Peshawar and later on absence notices were issued in two dailies also, under Rule 9 of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011. After doing the needful under the rules, the impugned order was issued. Learned counsel for the appellant, when confronted about his absence after 31.08.2012, frankly admitted that he was absent from duty, but insisted that

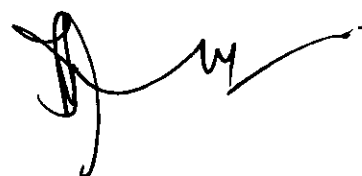


he had requested for extension in the ex-Pakistan leave. When further asked whether mere submission of application by a civil servant was enough for such a long leave or was it not necessary for him to have got it sanctioned, he agreed that sanction was mandatory. The august Supreme Court of Pakistan in its judgment reported as 2021-SCMR 144 has clearly held as follows:-

“6. From the record it is evident that the respondent has remained absent from duty and that he has filed some applications with the Bank asking for leave but such applications for leave were not allowed, rather through absence notices dated 08.07.2015, 27.07.2015 and 06.08.2015, the respondent was directed to join duty but he chose not to do so.

7. In the face of such absence from duty of the respondent, which being admitted, there was no need to hold a regular enquiry because this Court in the case of Federation of Pakistan through Secretary Ministry of Law and Justice Division, Islamabad V. Mamoon Ahmad Malik (2020 SCMR 1154), has already held that where the fact of absence from duty being admitted on the record, there was no need for holding of a regular enquiry for that there was no disputed fact involved to be enquired into.”


It is an agreed fact that a civil servant is bound by a set of rules and he has to stay within the ambit of those rules, otherwise it is a misconduct on his part and his competent authority has every right to proceed against him. In case of the appellant, there is admission of absence by his learned counsel. He stayed away from his lawful duty without extension of leave, and that too



for about seven months. Even today, when asked, his learned counsel confirmed that he is abroad.

7. In view of the above discussion, the service appeal is dismissed being groundless. Cost shall follow the event. Consign

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03rd day of January, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

FazleSubhan, P.S


S.A 1283/2013

03rd Jan, 2024

01. Mr. Ibad Ur Rehman, Advocate for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal is dismissed being groundless. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03rd day of January, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS