

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1345/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MOHAMMAD AKBAR KHAN ... MEMBER(E)

Mr. Kamran Saeed S/o Noor Said, Ex-Lecturer in Chemistry, Government of Degree College, Jandhola, Sub-Division Tank, Resident of Bogara, Tehsil Takhti Nasrati, District Karak.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Higher Education, Government of Khyber Pakhtunkhwa, Peshawar.
3. Director of Colleges, Government of Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Nasir Mehmood  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....02.09.2022

Date of Hearing.....12.12.2023

Date of Decision.....12.12.2023

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“It is therefore respectfully prayed that on accept of this service appeal, the impugned order dated 17.08.2022 may kindly be set aside and the appellant may be reinstated in service with all back benefits.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Lecturer in Chemistry vide order dated 0411.2010

on adhoc basis. Later on, his services were regularized vide Notification dated 15.12.2014. That in the year 2017, he applied for long leave as he had been selected for scholarship in the Gyeongsang National University, South Korea. His application was forwarded by the Principal Government Degree College, Jhandola and the appellant proceeded for South Korea. That on 11.12.2018, the Directorate of Education Merged Areas Khyber Pakhtunkhwa raised some objections over the application of the appellant and resultantly, his application was regretted on 31.01.2019. Thereafter, proceedings were initiated against the appellant. Consequently, vide order dated 13.08.2020, he was removed from service. After completion of Ph.D from South Korea on 25.02.2022, the appellant rushed back to Pakistan. That after getting knowledge of his removal, he filed departmental appeal on 06.04.2022 but the same was regretted vide order dated 17.08.2022. Therefore, the appellant filed the instant service appeal.

3. We have heard learned counsel for the appellant learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that he applied for leave as he had been selected for scholarship in the Gyeongsang National University, South Korea. His application was forwarded by the Principal and the appellant proceeded for South Korea. He further argued that the impugned notification is against law, fact and against the rules and regulation, without lawful authority, hence liable to be set aside. He further contended that appellant was condemned because the respondents were in the knowledge that the appellant after submitting application has proceeded abroad. He further contended that appellant's leave was regretted and was removed from service on technical grounds. He further contended that



codal formalities under Efficiency & Discipline Rules, 2011 were not fulfilled while removing the appellant from service, thus the whole proceedings are illegal, liable to be set aside.

5. Conversely, learned District Attorney contented that the appellant was required to obtain NOC from the parent department wait for the decision of competent authority regarding his leave but he did not wait and left the department without sanction of his leave. He further contended that the appellant was absent from duty since 20.02.2017 so proceedings under Rule 9 of the (E&D) Rules, 2011 was initiated against him. Absence notice was issued and service upon the appellant at his home address through registered post with direction to report duty place within 15 days but he did not report for duty. Thereafter, absence notices were published in two leading newspapers on 30.04.2020 and 01.05.2020 but the appellant did not respond to the notices and after fulfillment appellant of all codal formalities appellant was removed from service vide notification dated 13.08.2020.

6. Perusal of record reveals that appellant was appointed as Lecturer in Chemistry on Adhoc basis whose services were regularized in pursuance of Khyber Pakhtunkhwa Adhoc Lecturer Regularization of Service Act, 2014 vide notification dated 15/12/2014 and was posted at GDC Jhandola. Appellant selected for scholarship at Gynogsang National University South Korea. Appellant applied for Ex-Pakistan long leave of 730 days without pay through principal GDC Jhandola, who forwarded it to Director Education, the then FATA on 26/01/2017. Appellant after submitting long ex-Pakistan leave went for getting higher education but objection was raised on 11.12.2018 that appellant has not obtained NOC from provincial government. Appellant's application was regretted vide letter dated 31/01/2019. Departmental proceeding was initiated against the appellant in

his absence and a letter/notice was sent to his home address despite having knowledge that appellant is in South Africa. Appellant was removed from service vide impugned order dated 13/08/2020.

7. Record further reveal that appellant during his service applied for 730 days ex-Pakistan leave without pay which was not sanctioned on the ground of not obtaining NOC from his parent department. Appellant admitted that Ex-Pakistan leave was not sanctioned while he went abroad without getting Ex-Pakistan leave sanctioned and during this period of his absence he was removed from service vide impugned order dated 13.08.2020. Appellant upon his return to Pakistan filed application to join his service and to consider his absence period as study leave or extra ordinary leave without pay on 06.04.2022 but he could not justify his proceeding abroad without getting sanctioned leave order or NOC/permission from competent authority. Being a civil servant there are certain liabilities, duties and maintenance of service disciplines upon the appellant but without caring for that and without pleasure of the competent authority or for that matter NOC permission or leave, the appellant has admittedly gone abroad and after five years submitted application for his reinstatement which is not justified nor any justification has been given by the appellant. Admittedly impugned order was passed on 13.08.2020 and appellant filed his departmental appeal on 06.04.2022 which was dismissed as time barred. Departmental appeal is barred by one year and eight months as impugned order was passed on 13.08.2020 which was passed after observing legal/codal formalities as provided in Rule 9 of (E&D) Rules, 1989.


8. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled




Anwar-Ul-Haq v. Federation of Pakistan reported in 1995 SCMR 1505,  
Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State  
Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

9. For what has been discussed above, the appeal in hand is dismissed  
being time barred. Costs shall follow the events. Consign.

10. *Pronounced in open court in Peshawar and given under our hands  
and seal of the Tribunal on this 12<sup>th</sup> day of December, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)