

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7790/2021

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

Mohsin Ali S/O Shah Wali R/O D.A.K Ismail Khel Nowshera, presently in USA. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Accountant General Khyber Pakhtunkhwa.
3. Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa through its Director, Peshawar.
4. District Education Officer (Male) Nowshera. (Respondents)

Mr. Saifullah Muhib Kakakhel,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney.

... For respondents

Date of Institution.....	09.11.2021
Date of Hearing.....	19.02.2024
Date of Decision.....	19.02.2024

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 05.06.2021 of the DEO (Male) Nowshera (respondent No. 4) for imposing major penalty of removal from service against the appellant . It has been prayed that on acceptance of the appeal, the impugned order dated 05.06.2021 might be set aside, 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 was appointed as Drawing Master (BPS-09) in Elementary

& Secondary Education through appointment order dated 09.12.1999, on temporary basis. He applied for extraordinary leave without pay which was granted by respondent No. 04 with effect from 11.12.2015 to 10.11.2016, vide an order dated 01.01.2016. On the request of the appellant, the said leave was extended by the competent authority w.e.f. 11.12.2016 to 12.12.2018 (730 days), without pay. The appellant moved an application on 05.12.2020 to the competent authority for extension of his leave from 13.12.2020 to 12.12.2021, with half pay, for the reason stated therein, which was duly received and stamped by the Head Master, Government Middle School Dak Ismail Khan Nowshera. On 29.04.2021 an absence notice was received by appellant which was duly replied on 18.05.2021. The reasons for the unpaid leave and later on half paid leave was that the appellant was building a house to dwell in for himself, however, later on he was involved in litigation in the United States of America, wherein the learned Court, in order to restrain him from leaving the soil of the U.S, took his passport in judicial custody. The case lingered on for long and then emerged the Covid-19 pandemic and restrictions were imposed by almost all the countries to restrict and discourage travelling. Pakistan was added to red list by the United States of America and travel ban was imposed. An Act namely Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020 was passed by the Provincial Assembly of Khyber Pakhtunkhwa granting relaxation, exemptions and leniency to employees and restrained employers from taking any adverse action against employees, if they failed to serve, owing to the pandemic. According to Section 26(c) of the said Act, during the period of relief, no employee or worker should be laid off, terminated or



removed from service on account of his absence, furlough or non-performance of duties owing to closure of any establishment, shut down or other measures relating to epidemic control. Overlooking the Act, application for extension of half paid leave due to Covid and other material record, respondent No. 04 issued the notification dated 05.06.2021, whereby the appellant was removed from service owing to his absence from duty. Feeling aggrieved, he filed a departmental appeal to the Director Elementary & Secondary Education on 05.08.2021 which was rejected on 07.09.2021; hence the instant service appeal.

3. Respondents were put on notice. They submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

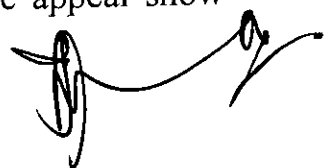
4. Learned counsel for the appellant, after presenting the case in detail, argued that respondents had not treated the appellant in accordance with law and that he was simply removed from service without taking any departmental proceedings against him. He further argued that the penalty imposed upon the appellant was very harsh and not commensurate with his guilt. According to him, the respondents blatantly violated the provisions of the Khyber Pakhtunkhwa Epidemic Control & Emergency Relief Act, 2020. 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 the appellant got extraordinary leave w.e.f 11.12.2015 till 10.12.2016, followed by further two extensions



till 12.12.2020, availing the continuous 5 years maximum available extraordinary leave, but it was worth to mention that he requested for that leave by falsely alleging house building and illness as evident from his leave applications, whereas he was out of the country without any NOC from the department, as admitted in his departmental appeal, and gainfully employed in the USA till his removal from service. Further leave was not granted to the appellant and he did not resume his duty despite the admission that he himself went to the office where he was informed about his leave application that it was refused. The learned DDA referred to the departmental appeal available at page 52 of the instant service appeal. He argued that by simply stating about confiscation of his passport in some sort of allegations in the USA could not be presented as a justification for grant of extension in leave. The learned DDA stated that under the law travelling abroad without NOC itself made the appellant guilty of misconduct. He informed about the absentee notice alongwith show cause notice duly published in Daily Express and Mashriq dated 21.05.2021. 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 Drawing Master in the Elementary and Secondary Education Department, proceeded on extraordinary leave (EOL), without pay, from 11.12.2015 to 10.12.2016 (365 days). On his request, the leave was extended from 11.12.2016 to 12.12.2018 (730 days). Another extension in the extraordinary leave was sanctioned by the competent authority, on his request, from 13.12.2018 to 12.12.2020 (732 days). His applications for extension of EOL available with his service appeal show



that he requested for leave, first for construction of his house and later, on the ground that he fell ill and could not complete the construction work. An application dated 05.12.2020, requesting for another extension of EOL from 13.12.2020 to 12.12.2021 (365 days) was not accepted by the competent authority, which means that he had to report back to his office, but instead of doing so, he absented himself from his lawful duty. An absence notice was issued by the office of District Education Officer (Male) Nowshera on 29.04.2021 after which show cause notice was issued in two dailies on 21.05.2021 but the appellant did not pay any heed to any of the notices and remained absent. An application annexed at page 52 of the service appeal shows that the appellant visited the office of the clerk of DEO (M) Nowshera for getting the knowledge of his application dated 05.12.2020 submitted by him for extension of his EOL. He was also aware of the absence notice dated 29.04.2021 and he had responded to that notice on 18.05.2021. His response of 18.05.2021 is also annexed with his service appeal at page 25, according to which he was residing in some foreign country and due to restriction on flights, in the wake of Covid-19, he could not travel back to Pakistan. In his application at page 52, he is stating that he has been residing in the United States of America for the last five years.


7. After going through the contents of the two applications at page 25 and 52 of his service appeal, it is abundantly clear that the appellant, while applying for extraordinary leave, never disclosed before his competent authority that he wanted to go abroad for which he was seeking leave. Being a civil servant, first of all he had to seek permission from his competent authority in getting the passport, in which his status could be shown as a



government servant. Then, before leaving the country, he had to get the necessary NOC of the government. But in this case, it appears that the appellant did not disclose his identity as a government servant in order to avoid the NOC from the government and managed to leave the country as a private citizen. He stayed abroad by placing false statement before his competent authority that EOL was required for construction of house. This mis-statement and leaving the country without NOC of the government tantamounts to serious misconduct on the part of the appellant for which he was rightly proceeded against departmentally under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. He could not point out any illegality or irregularity in the departmental proceedings/action, while mere saying that notices were not sent on the home address of the appellant is misconceived when there is endorsement of the attorney of the appellant on the notice requiring the appellant to resume duty, which shows proper service of notice upon him especially when the absence is not denied.

8. In view of the above discussion, the appeal in hand is dismissed being devoid of merits. Cost shall follow the event. Cosign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 19th day of February, 2024.*


(FARZEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

SA 7790/2021


Order

19th Feb. 2024

01. Mr. Saifullah Muhib Kakakhel, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand is dismissed being devoid of merits. 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 19th day of February, 2024. .*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS