

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 2337/2023

Tanveer Ahmad S/O Muhammad Saeed R/O Village Moonan, PO Sarai Saleh Tehsil and District Haripur.....

(Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa through Secretary E&SED Khyber Pakhtunkhwa & Others.....

(Respondents)

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(Respondent)

District Education Officer (M)
Haripur

Next date 27/3/24 A/Abnd.

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 2337/2023

Tanveer Ahmad S/O Muhammad Saeed R/O Village Moonan, PO Sarai Saleh Tehsil and District Haripur.....

**Khyber Pakhtunkhwa (Appellant)
Service Tribunal**

VERSUS

Diary No. 11810

Dated 19/3/24

Govt: of Khyber Pakhtunkhwa through Secretary E&SED Khyber Pakhtunkhwa & Others.....

(Respondents)

Respectfully Sheweth:

Para wise Comments on behalf of respondent No.1 & 3,4

Preliminary Objections:

- 1 That the appellant has got no cause of action to file the instant appeal.
- 2 That the appellant has not come to this Honorable Tribunal with clean hands.
- 3 That the Appellant has got no locus standi to file the instant appeal.
- 4 That the appellant has concealed the material facts from this Honorable Tribunal, hence the appeal in hand is liable to be dismissed.
- 5 That the appellant has filed the instant appeal on malafide motives.
- 6 The appellant has filed the instant appeal just to pressurize the respondents.
- 7 That the appeal of the appellant is barred by law and limitation.
- 8 That the appeal is bad for mis-joinder and non-joinder of necessary parties.

REPLY ON FACTS

1. Para 1 pertains to the appointment of the appellant which needs no comment.
2. Para 2 pertains to sanction of EOL for 730 days which also needs no comment.
3. Para 3 is incorrect. The application for extension of Extra Ordinary Leave without pay w.e.f 02-09-2012 to 31-05-2020 after the completion of the period of previous E.O.L without pay w.e.f 01-09-2010 to 1-09-2012 730 days has not been submitted to the answering respondent through proper channel.

- 4. Para 4 pertains to application for resumption of duty wherein appellant contended that he has remained absent from his duty due to illness of his father and mother however the said period of absence shall liable to be verified by FIA, whether during the said period he was within the country or abroad.
- 5. Para 5 is incorrect. Although the appellant was adjusted in service upon the recommendations of enquiry committee however the period of absence has not been verified by the enquiry committee through FIA whether during the said period he was within the country or abroad as the SEDO(M) Haripur has requested to re enquire the matter vide letter memo No-5000 dated 02-01-2024.Hence the matter requires to be required through Denovo enquiry. (**Copy of letter is attached as Annexure-A**)
- 6. The para 6 pertains to adjustment and subsequent taking the charge of appellant however the appellant cannot be exempted from departmental proceedings through the said adjustment order.
- 7. Para 7 is incorrect. The appellant has not submitted any application for the conversion of absence period into E.O.L without pay while the application as Annexure-K to the main appeal is submitted for release of his pay which was ordered to be released vide order Endst: No-12004 dated 03-01-2024.(**Copy of Order is attached as Annexure-B**)
- 8. Para 8 is incorrect. The departmental appeal of the appellant is badly time bard as the appellant was adjusted on 28-04-2020 and he filed the departmental appeal on 26-07-2023 which is badly time barred.
- 9. Para 9 is incorrect. The appeal of the appellant is liable to be rejected interalia on the following grounds.

REPLY ON THE GROUNDS:


- 1. Ground "1" is incorrect. The impugned act of the respondents is in accordance

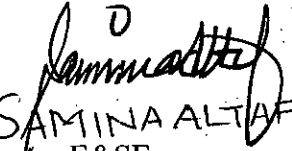
with law, rules and policy on the subject.


2. Ground "2" is incorrect. The matter relating to extra ordinary leave without pay w.e.f 02-9-2012 to 31-05-2020 is ordered to be forwarded to finance department for observation of rule 19 and rule 29 of the Khyber Pakhtunkhwa Civil servants Revised leave rules 1981 for avoiding further financial complications.
3. Ground "3" is incorrect. The Enquiry committee has not carefully observed the Rule 12 and rule 19 of the Khyber Pakhtunkhwa Civil Servant Revised leave rule 1981, hence the matter is required to be re-inquired.
4. Ground "4" is incorrect. The appellant cannot be granted any financial benefit without observing of codal formalities.
5. Ground "5" is incorrect. The salary of the appellant cannot be issued without observing of codal formalities and necessary documentation by the DDO concerned.
6. Ground "6" is incorrect the salary of the appellant is ordered to be released subject to observing of codal formalities and necessary documentation.
7. Ground "7" is incorrect. The impugned act of the respondents is in accordance with law, rules and policy on the subject.
8. Ground "8" is incorrect . The answering respondents are legally empowered to initiate departmental proceeding against the appellant on any stage of his service.
9. Ground "9 " is incorrect. All the facts and grounds are incorrect and misconceived and further grounds to be raised by the appellant during the course of arguments is discretionary power of the honorable Tribunal.
10. Ground "10 " is incorrect. The Departmental appeal as well as Service appeal of the appellant is badly barred by law and time.
11. That other points shall be raised at the time of arguments with the leave of this Honorable Tribunal .

PRAYER

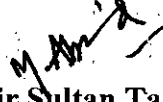
In view of the above made humble submissions, it is most respectfully prayed that on acceptance of foregoing factual position/ Comments, the instant appeal may very graciously be dismissed being meritless.


MASOOD AHMAD
Secretary E&SED
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.1)


SAMINA ALTAF
Director E&SE
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.2)


District Education Officer (Male)
Haripur.
(Respondent No.3)

MUKHTAR KHAN


Amir Sultan Tareen
Secretary Finance
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.4)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 2337/2023

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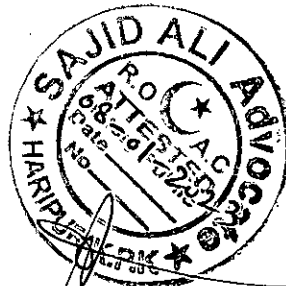
AFFIDAVIT

I Mr. Mukhtar Ahmad Khan DEO Litigation o/o DEO (M) Haripur do hereby solemnly affirmed and declare that the contents of accompanying Para wise comments are true and correct to the best of my knowledge and belief and nothing has been suppressed/concealed from this Honorable High Court.

It is further stated that the answers responded have not been placed before the court for defence struck off/cast.

Deponent

Mukhtar Ahmad
Mukhtar Ahmad
District Education Officer (M)
Haripur.



Masood Ahmad
(MASOOD AHMAD)
Secretary
E&SE Department Khyber
Pakhtunkhwa, Peshawar

Samina Altaf
(SAMINA ALTAF)
DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar

M. Sultan Tareen
AMIR SULTAN TAREEN
Secretary Finance
Khyber Pakhtunkhwa
Peshawar.

Annexure - A -

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OFFICE OF SUB DIVISIONAL EDUCATION OFFICER (MALE) HARIPUR.

Ph# 0995-920153
Mail: Hr7040@gmail.com



No. 5000 /Court Case/Tanveer Ahmad

Dated Haripur the 07/10/2024

To,

District Education Officer (Male)
Haripur.

Subject: - **PROVISION OF RECORD FOR PREPARATION OF PARAWISE
COMMENTS IN SERVICE APPEAL NO-2337/2023**

Memo:

Reference your office Memo No-11922 dated 28-12-2023 detail report is appended blow:

1. That according to the substituted order No- 3100-3105 dated 28-04-2020, the teacher concerned neither applied for E.O.L w.e.f. 02-09-2012 to 31-05-2020 nor produced the sanction by the competent authority (Finance Department) in the light of above mentioned office order.
2. It is stated that as per office order issued after recommendations received through Enquiry committee by your good office (substituted order No- 3100-3105 dated 28-04-2020) with condition No-1 reproduced as under:

" The absent period w.e.f 02-09-2012 to 31-05-2020 shall be got sanctioned as E.O.L without pay from the competent authority which is Finance Department KPK" in the light of above submissions the teacher concerned neither applied for E.O.L for the period in question along with sanction from Finance Department KPK nor submitted any kind of application for pay.

It is further added with humble request:-

- a) That as per Revised Leave Rules 1981 Section-19 mentioned in the recommendations of the enquiry committee, the concerned official cannot avail shelter by the ibid rule.

Attested
District Education Officer (Male)
Haripur

- b) That as per leave account of the teacher concerned, He had only 48 days leave in his credit followed by the 04 years service w.e.f. 01-09-2006 to 31-12-2010.
- c) That as per Revised Leave Rules 1981 Section 12(i) reproduced as below.
 "EOL may be granted on any ground upto a period of 05 years at a time, provided that the Civil Servant to whom such leave is granted has been in continue service for a period of not less than 10 years, in case of Civil Servant has not completed 10 years continue service, EOL (without) for maximum period of 02 years may be granted at the discretion of the leave sanctioning authority. This leave can be granted irrespective of the facts whether a Civil Servant is a permanent or temporary employee"
- d) That reference this office No. 4481-83 dated 30-12-2023 already endorsed to your good office directed the concerned teacher for provision of record, but he seems reluctant to provide the said record appended on the body of above referred letter.
- e) That last but not least the service book may please be examined thoroughly through pay fixation party as it seems that during his leave period his annual increment also been regularly maintained which is against the rules.

In the light of above detail it is requested that before submission of parawise comments to Honorable Service Tribunal Khyber Pakhtunkhwa the matter needs to be re-inquired in the light of " Revised Leave Rules 1981 and FR18 please."

[Signature]
 Sub Divisional Education Officer
 (Male) Haripur

[Signature]
 Attested
 District Education Officer (Male)
 Haripur



Annexure - B-
**OFFICE OF THE DISTRICT EDUCATION OFFICER (M)
HARIPUR.**



F.No 12004/Lit:

Dated: 02 /01/2024

MOST URGENT BEING COURT MATTER

To,

SDEO (Male)
Sub Division Haripur.

Subject:- **RELEASE OF SALARY IN RESPECT OF MR. TANVEER AHMAD PST GPS
SARAI SALEH HARIPUR.**

Memo:

With reference this office letter No.3100-3105/F.NO.45-5/GB/Reinstatement dated 28-04-2020. You are directed to release the pay of the above mentioned teacher within 02 days positively.

However the case for grant of EOL without pay from the period of 02-09-2012 to 31-05-2020 shall be forwarded to finance department through proper channel subject to the filling of application thereof by the employee concerned. Furthermore the teacher concerned is directed to file the application for grant of EOL without pay through proper channel for onward submission to finance department.

-sd-
District Education Officer (M)
Haripur

Even No. & date:

Copy forwarded for information to the:-

1. Registrar Service Tribunal Khyber Pakhtunkhwa Peshawar.
2. PA to Director E&SE Khyber Pakhtunkhwa Peshawar.
3. District Accounts Officer Haripur.
4. ASDEO Circle Sarai Saleh.
5. Teacher concerned.
6. Office Copy.

[Signature]
District Education Officer (M)
Haripur

Attest - d
[Signature]
District Education Officer (Male)
Haripur



09

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) HARIPUR



Ph. No. 0995-920150, 920151, 920152
Email: deomalehrp@yahoo.com

AUTHORITY LETTER

I Mr. Mukhtar Ahmad Khan District Education Officer (M) Haripur do hereby authorized Syed Mehboob Shah ADEO office of the undersigned for submission of Joint Parawise Comments / Reply in Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in c/w Service Appeal No- 2337/2023 titled Tanveer Ahmad VS Government of Khyber Pakhtunkhwa through Secretary E&SED Khyber Pakhtunkhwa and others for affidavit and onward submission to Honorable Court on behalf of all official respondents.


District Education Officer(Male)
Haripur

MANUAL

SERVICES

RULES

GOVERNMENT EMPLOYEES

2018

2) The leave salary during disability leave shall be equal to full pay for the first one hundred and eighty days and on half pay for the remaining period.

12. **Extraordinary leave (Leave without pay)**-(1) Extraordinary leave may be granted outside leave account on each occasion up to a maximum period of five years at a time; provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less than ten years. In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave sanctioning authority. This leave can be granted irrespective of the fact whether a civil servant is a permanent or temporary employee,

2) The maximum period of extraordinary leave without pay combined with leave on full pay and leave on half pay shall be subject to the limit of 5 years prescribed in FR-18, i.e. the maximum period of extraordinary leave without pay that would be admissible to a civil servant who has rendered continuous service for a period of not less than 10 years shall be 5 years less the period of leave on full pay and leave on half pay so combined.

3) Extraordinary leave may be granted retrospectively in lieu of absence without leave:

4)* Notwithstanding anything to the contrary contained in the preceding sub-rules, the Finance Department may in cases of individual hardship, grant extra-ordinary leave in excess of the maximum leave admissible to a civil servant under sub-rule(1) or sub-rule(2), as the case may be. *Added vide No.FD/SO(SR-IV)5-5/80,Vol-IV dated 6-7-1999.

CLARIFICATION.

i) Extra ordinary leave (Leave without pay) of 5 years is admissible to a Government servant for 'each spell' of 10 years of continuous service. If, however, a civil servant has not completed 10 years of continuous service on each occasion/time, Extra Ordinary leave (leave without pay) for maximum period of two years may be granted at the discretion of the Competent Authority.

ii) Maximum leave availed during one continuous period of 10 years should also not exceed 5 years. The cases already decided need not be reopened.

No. FD/SO(SR-IV)5-5/80/Vol-III, dated 31.7.91

13. **Leave on Medical Certificate.** Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212,213 and Rules 220 to 231 for the grant of leave on medical grounds will apply.

14. **Leave preparatory to retirement-** The maximum period up to which a Civil Servant may be granted leave preparatory to retirement shall be 365 days only. It may be taken subject to availability in the leave account, either on full pay or partly on full pay and partly on half pay, or entirely on half pay, at the discretion of the Civil Servant and it will not extend beyond the age of superannuation.

15. **Recreation leave -** Recreation leave may be granted for fifteen days once in a calendar year, the debit to the leave account may, however, be for 10 days leave on full pay;

Provided that such leave shall not be admissible to a Civil Servant enjoying vocation.

Note: Casual leave (as Recreation Leave) shall, however, continue to be granted for 10 days only subject to other conditions under conditions under Government instructions.

16. Leave Ex-Pakistan: 1) Leave Ex-Pakistan may be granted on full pay to a Civil Servant who applies for such leave or who proceeds abroad during leave, or takes leave while posted abroad or is otherwise on duty abroad & makes a specific request to that effect.

2) The leave pay to be drawn abroad shall be restricted to a maximum of three thousand rupees per month.

3) The leave pay shall be payable in sterling, if such leave is spent in Asia other than Pakistan and India.

4) Such leave pay shall be payable for the actual period of leave spent abroad subject to maximum of one hundred and twenty days at a time/.

5) The Civil Servants appointed after 17th May 1958, shall draw their leave salary in rupees in Pakistan irrespective of the country where they spend their leave.

6) Leave Ex-Pakistan will be regulated and be subject to the same limits and conditions as prescribed in rule 4.5 and 12.

17. Assigning reasons for Leave- It shall not be necessary to specify the reasons for which leave has been applied, so long as that leave is due and admissible to Civil Servant.

18. Commencement and end of Leave- Instead of indicating whether leave starts/ends in the forenoon or afternoon, leave shall commence from the day following that on which a Civil Servant hands over the charge of his post. It shall end on the day preceding that on which he resumes duty.

19. Absence after the expiry of Leave- Unless his leave is extended by the leave sanctioning authority, a Civil Servant who remains absent (except for circumstances beyond his control) after the end of his leave shall not be entitled to any remuneration for the period of such absence, and double the period of such absence shall be debited against his leave account. Such debit shall if there is insufficient credit in the leave account, be adjusted against future accumulations. Such double debit shall not preclude any disciplinary action that may be considered necessary under any rule for the time being in force, after affording reasonable opportunity to Civil Servant concerned to indicate his position.

20. Encashment of Leave preparatory to retirement: 1) Where a civil servant opts not to avail the leave preparatory to retirement admissible to him under rule 14, he shall be allowed leave salary for the period for which leave preparatory to retirement is admissible, subject to a maximum of *365 days. For the purpose of lump sum payment in lieu of leave preparatory to retirement only the senior post allowance will be included in the leave pay so admissible. The payment of leave pay in lieu of leave preparatory to retirement may be made to the Civil Servant either in lump sum at the time of retirement or may at his option, be drawn by him month-wise, in arrears, for and during the period L.P.R.

2) Encashment of leave preparatory to retirement (LPR) not exceeding *[365] days shall be effective from the first day of July, 2012 and shall, for the entire period of leave refused or opted for encashment, be applicable to a civil servant retired, as the case may

GOVERNMENT OF PAKISTAN
FINANCE DIVISION
(REGULATIONS WING)

NO.F.1(12)R-4/97.

Islamabad, the January 7, 2002

OFFICE MEMORANDUM

SUBJECT:- CONVERSION OF EXTRAORDINARY LEAVE INTO ANOTHER KIND OF LEAVE.

The undersigned is directed to state that Finance Division has been receiving references regarding conversion of Extraordinary leave (EOL) without pay into other kinds of leave. It is clarified that following special features of the EOL need to be kept in view while dealing with such cases:-

- a) Pay and allowances are inadmissible during EOL. Annual increments also are inadmissible under FR-26.
- b) The period of EOL is not counted towards pension either under CSR 361.
- c) EOL can cover a period of un-authorized absence, either under administrative order vide Rule 9(3) of Revised Leave Rules, 1980 or on the courts directions.
- d) The period of EOL is not considered as period spent on duty under FR-9(6).

2. Due to the special characteristic of EOL stated above, no rule has been framed for its conversion into another kind of leave retrospectively because it not only involves payment of salary for the previous EOL period but would also involve change in the direction/orders of the authority. Moreover, a Government servant under rule 24 of Revised Leave Rule, 1980 has been given the option to apply for any kind of leave. Leave sanctioning authority has no power to change the nature of leave. This option, once exercised by the Government servant is considered as final. Sometimes cases for retrospective conversion of EOL into another kind of leave are moved on the basis of CSR 232(3) inspite of the

Contd.....Page 2

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fact that CSR 232(3) does not specifically deal with EOL. Similarly, Government decision (3) under FR-87 cannot be used for conversion of EOL into another kind of leave because the said rule governs the leave salary. In the light of foregoing position, it has been decided that EOL cannot be converted into any other kind of leave retrospectively.

3. Ministries/Divisions of Federal Government are requested to circulate the aforesaid decision to their Attached Departments and Subordinate Offices for information and compliance.

Sd/-
(MUHAMMAD RIAZ)
SECTION OFFICER (R.4)

Page 02.