

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT.

Service Appeal No. 105/2019

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

Dr. Muhammad Nawaz Rajpar, Ex: Lecturer in Forestry, Pakistan Forest Institute, Khyber Pakhtunkhwa, Peshawar presently serving as Assistant Professor, Shaheed Benazir Bhutto University, Sheringal, Dir Upper.
.....(*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary, Forest, Environment & Wildlife Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
3. The Director General, Pakistan Forest Institute, Khyber Pakhtunkhwa, Peshawar.(*Respondents*)

Mr. Noor Muhammad Khattak,
Advocate

... For appellant

Mr. Muhammad Jan,
Deputy District Attorney

... For respondents

Date of Institution	23.01.2019
Date of Hearing	06.05.2024
Date of Decision	06.05.2024

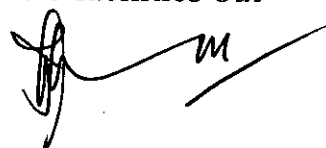
JUDGEMENT

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 impugned notification dated 20.08.2018, communicated to the appellant on 17.09.2018, whereby major penalty of removal from service alongwith recovery of Rs. 2.04 million was imposed on him and against no action taken on his departmental appeal within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned notification dated 20.08.2018 might also be set aside, and the respondents be



directed to reinstate the appellant for the purpose of relieving him and the recovery amounting to Rs. 2.04 million might also 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 initially appointed as Technical Assistant (BPS-16) vide order dated 20.09.2000 in the office of respondent No. 3. During service he was appointed as Lecturer in Forestry at Pakistan Forest Institute, Peshawar vide order dated 06.09.2007 on the recommendation of Federal Public Service Commission. He was awarded a scholarship of Ph.D in the field of "Wildlife Management" by the Government of Pakistan under Forestry Sector Research and Development Project from Putra University, Malaysia for which NOC was granted by the Government of Pakistan, Ministry of Environment. In lieu thereof, surety bond was furnished by him. After completion of his Ph.D program in the year 2010, he submitted joining report on 05.10.2010 for duty before respondent No. 3. In the meanwhile a project post of Consultant (Wildlife) was advertised by Forest, Environment and Wildlife Department, Government of Sindh for which he fulfilled the requisite criteria and hence he applied for the said post through proper channel. He was selected on the post of Consultant (Wildlife) on contract basis for a period of two years vide notification dated 15.08.2014. On completion of the project, the appellant was repatriated to his parent department i.e. Pakistan Forest Institute Peshawar vide notification dated 30.09.2016. He submitted his arrival report and started his duty as Lecturer. After the passage of more than six months, when the salary of the appellant was not released, he submitted a request for the issuance of salary and also forwarded an application for the provision of other basic facilities but



no reply was received. In the meanwhile some posts of Assistant Professors on TTS basis were advertised in Shaheed Benazir Bhutto University Sheringal, Dir Upper. The appellant applied for the post of Assistant Professor in the said university through proper channel and was selected by the syndicate vide order dated 14.11.2016 and submitted his joining report on 01.03.2017. Respondents initiated disciplinary proceedings against him on the pretext that he had violated condition No. 3 of the affidavit which he had signed/furnished with the department. In response, the appellant submitted his reply to the show cause dated 13.04.2017 and fully explained the situation regarding the difficulties he had faced in the department after his arrival from abroad. Respondents, without conducting regular inquiry and associating the appellant in the inquiry, issued the impugned notification dated 20.08.2018, communicated to the appellant on 17.09.2018, whereby he was removed from service alongwith recovery amounting to Rs. 2.04 million. Feeling aggrieved, he filed departmental appeal before the appellate authority but no reply was received. He knocked the door of the Honourable Peshawar High Court and vide order dated 17.11.2018, the operation of the impugned order was suspended to the extent of recovery; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned 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 impugned notification dated 20.08.2018 was against the law,



facts, norms of natural justice and material on record, hence not tenable and liable to be set aside. According to the Deed Agreement of the Higher Education Commission, there was no bar on the scholar that he would only serve the concerned department on his return to Pakistan. He further argued that no such condition was laid down in one of the agreement deeds of the respondent department but in the case of the appellant, the respondents laid down/attached the condition that he would serve the department, therefore, the case of the respondent department was discriminatory. He further argued that no charge sheet and statement of allegations was served on the appellant nor regular inquiry was conducted in the matter, which were mandatory, and no chance of personal hearing and defense was provided to him before issuance of the impugned notification dated 20.08.2018. He requested that the appeal might be accepted as prayed for.


5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was nominated for Ph.D studies in Wildlife Management at University of Putra, Malaysia, under the PSDP Forestry Sector Research and Development Project, PFI Peshawar for a period of three years w.e.f. 07.07.2006 to 06.07.2009 and he was relieved from duty vide notification dated 07.07.2006. The appellant furnished surety bond/undertaking of Rs. 2.04 million, that upon completion of Ph.D study, he should return to Pakistan and serve for a period not less than five years at any suitable post at PFI, Peshawar. Learned District Attorney informed that during the said Ph.D programme, the appellant was selected and appointed against the post of Lecturer in Forestry (BPS- 17) at PFI, Peshawar vide Ministry of Environment, Islamabad notification dated 15.12.2007. Later on, the



competent authority, on the request of the appellant, extended his deputation/study period for another year w.e.f. 07.07.2009 to 06.07.2010 vide letter dated 27.04.2010. After doing his Ph.D from University of Putra Malaysia, on government expenditure, he joined his duty at PFI, Peshawar on 05.10.2010. However, on 04.06.2012 he left the department by submitting an application for grant of 05 days casual leave w.e.f. 04.06.2012, without getting it sanctioned by the competent authority, followed by submitting three consecutive applications for grant of one month leave on medical ground w.e.f. 09.06.2012, 120 days earned leave w.e.f 13.12.2012 and one year leave w.e.f. 01.09.2012, which were not granted due to exigency of his service. He was directed to report for duty at PFI immediately vide letter dated 04.06.2012 followed by a series of reminders, but he did not comply with the orders and remained absent from duty. Learned District Attorney invited attention to clause 3 of surety bond/undertaking wherein it was mentioned that upon completion of terms of fellowship/scholarship, he should return to Pakistan and serve Government of Pakistan/PFI for a period not less than 05 years at any suitable post at PFI. In case of failure, he was liable to pay a sum of Rs. 2.04 million to the Government of Pakistan/PFI, Peshawar. Learned District Attorney stated that the appellant submitted an application dated 31.12.2011 for grant of NOC to apply for the post of Deputy Director Park (BPS- 18) in Sind Wildlife Department, Government of Sind, which was regretted by the department vide letter dated 13.01.2012 and he was informed that he was bound by the surety bond and unless he discharged his bond liability, NOC could not be granted to him. Appellant submitted another application dated 12.08.2014 for grant of NOC to apply for the post of Consultant (Wildlife)



BPS- 20, in Sind Wildlife Department which was also regretted for the same reason vide letter dated 30.09.2014. In the meanwhile, a report was received that the appellant was working in Sind Wildlife Department against the post of Consultant (Wildlife) BPS- 20, without informing or getting NOC from the competent authority, which led him guilty of misconduct. Later on, Administrative Department granted him NOC for Consultant (Wildlife) in Sind Wildlife Department subject to the condition of depositing the outstanding liability of surety bond amounting to Rs. 2.04 million in three installments and also that he should not claim the payment of any amount or arrears on account of salary, leave salary or any other emoluments or benefit for the period of his unauthorized absence from duty at PFI, Peshawar vide letter dated 16.06.2016. Learned District Attorney argued that as per condition of the NOC, the appellant was liable to pay the first installment of his surety bond amount of Rs. 680,000/- on 30.08.2016 which he did not deposit and thus he violated the agreement. On the point of repatriation, learned District Attorney informed that the Government of Sind, Forest & Wildlife Department, prior to expiry of his contract period, repatriated the appellant and directed to him to report to his parent department PFI, Peshawar for duty with immediate effect vide notification dated 30.09.2016, however, the appellant submitted his arrival report on 21.12.2016. Later on, Administrative Department with the advice of Regulation Wing, Establishment Department Khyber Pakhtunkhwa, on his repatriation placed his services at the disposal of Director General, PFI w.e.f 20.04.2017 and he assumed the charge in PFI on 05.06.2017, after lapse of 45 days. Soon after that, it was reported by the Director, Forest Education Division, PFI, Peshawar that the appellant was absent again from duty w.e.f.



08.08.2017, without prior approval or permission or information to the authority, therefore he was directed vide letters dated 05.09.2017 and 29.08.2017 to report for duty but he remained absent. He further argued that the appellant did not apply through proper channel for the post of Assistant Professor in Shaheed Benazir Bhutto University Sheringal, Dir Upper which was required under West Pakistan (Application for posts) Rules 1957. Disciplinary proceedings were initiated under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 and the competent authority constituted an inquiry committee vide notification dated 02.11.2017. The inquiry committee fixed the date of hearing on 15.12.2017 but the appellant did not appear before the committee. He was given another chance with the direction to submit reply and appear before the committee on 22.12.2017 but he did not appear and submitted reply to the charge sheet and statement of allegations on 03.01.2018 and appeared before the committee on the same date. The competent authority, on the findings of the inquiry committee and other relevant documents, served upon him a show cause notice to which he submitted reply on 26.04.2017, wherein he requested to give him a chance of personal hearing. The competent authority gave him the opportunity of personal hearing on 17.07.2018 but he did not attend. Later on, on his request, the competent authority gave him another date for personal hearing on 30.07.2018, which he attended, but could not prove his innocence and was removed from service alongwith recovery of the amount of Rs. 2.04 million. Learned District Attorney further argued that while deciding the writ petition filed by the appellant, the Hon'ble Peshawar High Court directed the Departmental Authority to decide the departmental appeal in one way or the



other, strictly in accordance with law, which was considered and rejected by the Appellate Authority on 16.06.2019. He requested that the appeal might be dismissed.

6. Through this service appeal, the appellant has impugned a notification dated 20.08.2018 before us, vide which he was removed from service alongwith recovery of Rs. 2.04 million from him that had been spent on him out of government exchequer for acquiring his Ph.D degree from abroad. Arguments and record presented before us show that the appellant was first appointed as Technical Assistant in the Pakistan Forest Institute in 2000 and later on, as Lecturer in Forestry in the same institute in 2007. Before his appointment as Lecturer, he had applied for admission in Ph.D programme in Malaysia for which necessary NOC was issued to him by the Government of Pakistan, Ministry of Environment on 20.06.2006, with effect from 03.06.2006 for three years. A surety bond was also got signed by the appellant with the undertaking as follows:-

- “1. *He shall faithfully confirm to and abide by the institutions issued with regard to his studies by the offering country/organization during the period of his fellowship and shall whole heartedly and diligently engage himself in the studies, training and research work pertaining to the fellowship/scholarship abroad and shall take tests and examinations as may be prescribed.*
2. *He shall confirm his studies to the aforesaid field and shall not exchange it without prior permission of the President.*
3. *Upon the completion of terms of the fellowship/scholarship he shall return to Pakistan and serve President of Pakistan for a period not less than five years in any suitable post at Pakistan Forest Institute, Peshawar of which the President shall be the*



sole judge and upon such terms and conditions as the President may prescribe.

4. *Upon the return from abroad he shall have no right to claim higher pay or seniority over others on account of the said training.*
5. *In the event of the breach of any of aforesaid terms not arising from his illness certified to the satisfaction of the President, the fellow/scholar binds himself firmly to pay on the demand of sum of Rs. 2.04 million (Rupees Two Million and Forty thousand)”*
7. After that, the Pakistan Forest Institute was devolved from Federal Government to the provincial government of Khyber Pakhtunkhwa. After completion of his course, the appellant submitted his arrival report on 05.10.2010 to the Director General PFI. In 2011, he requested for grant of NOC to apply for a post of Deputy Director Parks (BS- 18) in the Sind Wildlife Department but the same was regretted by the Government of Khyber Pakhtunkhwa on the ground that in terms of the surety bond signed by him, he was under obligation to serve the PFI, for a period of 5 years, after completion of his Ph.D. In 2014, he again applied for NOC for applying for a post of Consultant in Wildlife (BS- 20) in the Government of Sind, which was allowed on 16.06.2016 with the following conditions:-

- “1. *Payment of Surety Bond amounting to Rs. 2.04 Million in three equal installments as undertaken by the officer on non-judicial stamp paper executed by him (copies enclosed) and undertaking of the two Forest Department’s Guarantors as per stipulated time line given below;*

<u>Installment</u>	<u>Amount Rs.</u>	<u>Date of payment</u>
1 st installment	6,80,000/-	30.06.2016



2 nd installment	6,80,000/-	30.06.2017
3 rd installment	6,80,000/-	30.03.2018

2. *He shall not claim payment of any amount or arrears on account of salary, leave salary or any other emoluments/benefits for the period of his unauthorized absence i.e. from 23.11.2012 till date."*

8. From the record, it is extremely clear that the appellant joined the Government of Sind on 26.08.2014 in pursuance of their notification dated 15.08.2014, without getting the necessary NOC from his competent authority in the Government of Khyber Pakhtunkhwa. The notification of 15.08.2014 shows that he was appointed for a period of three years. After he submitted his arrival report there, another notification dated 27.08.2014 was issued, to acknowledge his arrival. It was noted that none of the two notifications were endorsed to the Government of Khyber Pakhtunkhwa. Another notification dated 30.09.2016 of Government of Sind, vide which the initial three years contract seems to be curtailed to two years, shows that it was issued by the Government of Sind on receipt of NOC of the Government of Khyber Pakhtunkhwa dated 16.06.2016 vide which the obligations of the appellant had been highlighted. Notification dated 30.06.2016 had been endorsed to the Government of Khyber Pakhtunkhwa also, which shows that the Government of Sind had been kept in dark by the appellant regarding his surety bond and conditions he had agreed with his parent department/government, at the time of applying and joining the post of Consultant. Here again, we see that despite being repatriated in the month of September 2016, the appellant submitted his arrival in the Khyber Pakhtunkhwa in December, 2016, almost after three months. After that, despite being adjusted and posted vide a notification dated



20.04.2017, he submitted his arrival report on 05.06.2017. In a representation before the Chief Secretary, Khyber Pakhtunkhwa, he himself admitted that after submitting his arrival report in December, 2016, he proceeded to his native village in Sind and came back to Peshawar when he received the notification dated 20.04.2017. Being a civil servant, he was bound to immediately submit his arrival reports in pursuance of the two notifications but he acted in an extremely casual way.

9. When the entire proceedings of repatriation from Sind Government and joining in the Government of Khyber Pakhtunkhwa was underway, the appellant had applied for appointment as Assistant Professor in the Shaheed Benazir Bhutto University, Sheringal, Dir Upper and was issued the order of appointment on 14.11.2016 and he joined the post on 01.03.2017. It is worth to note that no NOC was obtained by him from his competent authority before applying for the said post, which is a clear violation of the rules. His joining report dated 01.03.2017 shows that he was employed at two places, one in the Government of Khyber Pakhtunkhwa and the other in the Shaheed Benazir Bhutto University which is highly objectionable and against the law and rules governing his services at both the places.

10. When an inquiry was initiated against the appellant and he was asked to join the proceedings by submitting his reply and appear in person, he showed reluctance and did the needful at a second chance. When he was called by the Chief Secretary Khyber Pakhtunkhwa, in response to his reply to showcause notice, he did not appear on the date fixed and the date for his personal hearing had to be changed. Being a member of civil service of the province, the





appellant was under obligation to be dutiful and respectful in every way, but his reluctance to appear first before the Inquiry Committee and then before the Chief Secretary, his competent authority, clearly shows that he did not pay any heed to their directions. The Inquiry Committee as well as his competent authority made sure that a fair opportunity was given to him to defend his case before passing any order.

11. After going through the details of the case, we are unison that the appellant was bound by the conditions he agreed while signing the surety bond, but he violated the same. Moreover, he violated the rules when he joined the Shaheed Benazir Bhutto University without informing his competent authority and getting the necessary NOC. In view of such blatant violations, he was rightly proceeded against. In our view, he was given every opportunity to defend himself and thus the conditions of a fair trial had been fulfilled.

12. In view of the above discussion, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

13. *Pronounced in open court in Camp Court, Swat and given under our hands and seal of the Tribunal this 06th day of May, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court, Swat.

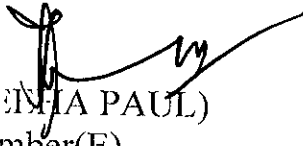

(RASHIDA BANO)
Member(J)
Camp Court, Swat.


SA 105/2019

06th May, 2024 01. Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 12 pages, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

03. *Pronounced in open court at camp court, Swat and given under our hands and seal of the Tribunal on this 06th day of May, 2024.*


(FARIHA PAUL)
Member(E)
Camp Court, Swat


(RASHIDA BANO)
Member(J)
Camp Court, Swat

Fazal Subhan PS