

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.1379/2023

Date of presentation of Appeal.....20.06.2023

Date of Hearing.....31.07.2024

Date of Decision.....31.07.2024

Mr. Abdul Saboor Ex-Monitoring & Data Collection Assistant
(BPS-16) IMU, Health Department, Khyber Pakhtunkhwa,
Peshawar.....(*Appellant*)

Versus

1. **The Secretary** Health Department, Khyber Pakhtunkhwa,
Peshawar.
2. **The Director** Independent Monitoring Unit, Health Department,
Khyber Pakhtunkhwa, Peshawar.
3. **The Divisional Monitoring Officer**, (IMU) Health Department,
Malakand-I at Swat.....(*Respondents*)

Present:

Mr. Noor Muhammad Khattak, Advocate..For the appellant

Mr. Muhammad Jan, District Attorney.....For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 AGAINST THE IMPUGNED ORDER
DATED 13.02.2023 WHEREBY MAJOR
PENALTY OF REMOVAL FROM SERVICE HAS
BEEN IMPOSED UPON THE APPELLANT AND
AGAINST THE INACTION OF THE
RESPONDENTS BY NOT DECIDING THE
DEPARTMENTAL APPEAL WITHIN THE
STATUTORY PERIOD OF NINETY DAYS.**

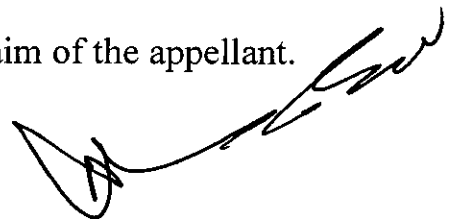
JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's

case as per memo and grounds of appeal is that he was

initially appointed as Data Collecting Officer (BPS-16) vide order dated 18.02.2015; that vide Notification dated 30.06.2017, services of the appellant alongwith other employees were regularized under the Khyber Pakhtunkhwa Employees of Health Department (Regularization of Service) Act, 2017; that during service, admission for Ph.D was allowed at China, for which he applied for study leave; that he left for China for the purpose of study leave; that upon arrival from China, he approached the respondent department for joining his service but he was not allowed; that feeling aggrieved, he filed departmental appeal followed by Service Appeal No.6585/2021 and this Tribunal vide judgment dated 21.09.2022 directed the respondents to decide the departmental appeal of the appellant according to law and rules; that show cause notice was issued to the appellant on 11.11.2022 and vide impugned order dated 13.02.2023 he was removed from service; that feeling aggrieved, he filed departmental appeal, but the same was not responded, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

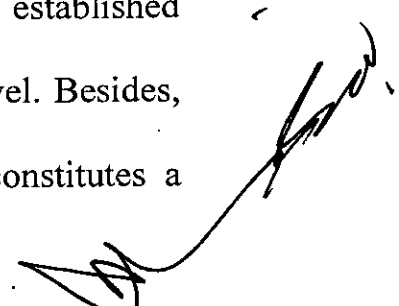


03. We have heard learned counsel for the appellant and learned District Attorney for respondents.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

05. The matter involved in this case is reinstatement of the appellant after arriving back from China. In the earlier round of litigation, the appeal of the appellant bearing No.6868/2021 was remitted back to the department for decision on the departmental appeal of the appellant in accordance with law/rules. After the judgment, the department initiated disciplinary proceedings by issuing show cause notice to the appellant and the appellant submitted reply to the show cause notice, however, being dissatisfied with his reply, he was dismissed from service.

06. Admittedly, the appellant went abroad without getting NOC for admission and prior permission for leaving abroad or for that matter without obtaining study leave. The appellant violated the rules by traveling abroad without obtaining the required No Objection Certificate (NOC) for admission and prior permission for leaving the country, which action demonstrates a disregard for the established protocols and procedures governing foreign travel. Besides, failure to obtain NOC and prior permission constitutes a



breach of discipline and misconduct. The department's decision to take disciplinary action against the appellant is justified, given the appellant's failure to comply with the rules.

07. Therefore, the Tribunal upholds the department's decision, and the appeal is dismissed with costs. The appellant's actions were in clear violation of the rules, and disciplinary action is warranted as the appellant was expected to comply with the rules and regulations governing foreign travel in the future. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 31st day of July, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah