

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 2439/2023

Noor Muhammad Yasir (Appellant)

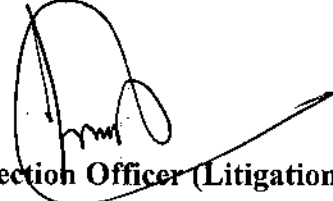
VERSUS

**Additional Chief Secretary Home and Tribal Affairs Department, Government of Khyber
Pakhtunkhwa &**

Others(Respondents)

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Section Officer (Litigation-II)
Home & Tribal Affairs Department
Khyber Pakhtunkhwa

Section Officer (Litigation-II)
Home & Tribal Affairs Deptt:
Khyber Pakhtunkhwa

①

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 2439/2023

Mr. Noor Muhammad Yasir, Assistant Programmer (BPS-16), DC Office Kohat.

.....APPELLANT

VERSUS

1. **The Government** of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and **Other...**

..... RESPONDENTS

Comments On Behalf Of Respondents No.1/2.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15241

Dated 28/8/24

PRELIMINARY OBJECTIONS:

1. That the Appellant has got no Cause of Action.
2. That the instant Service Appeal is not maintainable in the eyes of law.
3. The Appellant was transferred to office of DC Kohat on 13-07-2021, whereafter, he remained absent from duty till 22.02.2023 without permission or information.
4. The Appellant was issued a Notice dated 21.12.2022 (**Annex-I**) but he did not reply.
5. That the Appellant is estopped by his own conduct.

PARAWISE REPLY:-

Respectfully Sheweth,

1. Pertains to record, hence need to be proved.
2. Pertains to record, hence need to be proved.
3. Pertains to record, hence need to be proved.
4. Pertains to record, hence need to be proved.
5. The Para is drafted in unclear words, presumably, with the object of hiding the real picture from this Hon'ble Tribunal. The inquiry was initiated on account of willful absence from duty, reported by Deputy Commissioner Kohat, vide letter No.689-91/DC-KT/LC dated 07-12-2022 (**Annex-II**), revealing that Appellant assumed the charge of his post on 13-07-2021 and thereafter did not attend his duties till date. Upon receiving the above report from DC Office Kohat, a notice was issued on his home address to resume duty within fifteen days as per E&D rules-2011. The said official did not assume his duties within stipulated time period upon which a notice was published in two leading newspapers directing him to resume duty within 15 days of the publication of that notice, failing which an ex-parte decision shall be taken against the absentee/appellant. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such government servant. In response to the notice publish in newspaper the said official submitted his reply of the notice.

The reply of the official was processed and found unsatisfactory upon which Charge Sheet and Statement of Allegation was issued to the said official and an Inquiry was initiated. The Inquiry Committee submitted Inquiry Report with the following recommendation:

- i. The accused remained willfully absent from duty for 01 year, 09 months and 22 days which clearly indicates lack of interest. His recorded statement shows variation viz-a-viz his submitted reply in response to daily Aaj published notice.
- ii. According to the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, Rule-4.1 (a) (ii) & (iii). The following penalties have been imposed on the accused namely Noor Muhammad Yasir April (BPS-16) office of DC Kohat:-
 - i. Withholding of promotion for 2 years and stoppage of 2 annual increments with immediate effect.
 - ii. Recovery of salary w.e.f from 1/8/2021 to 22/2/2023. (Inquiry Report is (Annex-III).
6. Pertains to record.
7. Pertains to record. However, the Inquiry Report was processed. Show cause was issued. In response the Appellant submitted reply to the show cause notice, which was processed accordingly and during this process the said official also applied for personal hearing, upon which was called for personal hearing before the competent authority on 15/05/2023 at 10:00 April. "The said official was personally heard where the Appellant *accepted he was abroad also for some time looking for job*. Penalty of stoppage of 02 annual increments with immediate effect and recovery of salary w.e.f 01/08/2021 to 22/02/2023 was imposed on the said official.
8. The Review Petition was duly processed and filed by the Competent Authority.
9. It is incorrect to call the order dated 19-05-2023 illegal.

GROUND

- A. Incorrect, hence denied. Detailed reply already provided vide Para 5 & 6 of para wise comments.
- B. Incorrect, hence denied.
- C. Incorrect, vague, absurd, hence denied.
- D. Incorrect, hence denied. Appellant is awarded penalty of stoppage of 02 annual increments only. The other order is regarding recovery of the salary paid to the Appellant for the period he remained absent from duty. No person can claim salary for a period where duty is not performed.
- E. As replied vide para F above.
- F. Incorrect, hence denied.
- G. Pertains to record, hence need to be proved.
- H. Incorrect, hence denied.
- I. The Respondent also seek permission of this Hon'ble Tribunal to rely on additional grounds at time of arguments.

PRAYER:

It is therefore, most humbly prayed before this Hon'ble Tribunal the instant service appeal, being devoid of merit may very graciously be dismissed with cost, any other remedy this Hon'ble Tribunal deems appropriate may also be awarded in favor of respondents and against the appellant.

**Additional Chief Secretary
Home & Tribal Affairs Department
Respondent No.1/2
Additional Chief Secretary
Home & T.As Department
Khyber Pakhtunkhwa.**

(Muhammad Abid Majeed)



GOVERNMENT OF
KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

No. E & A (HD)7-149/22/P.F
Dated Peshawar the December 21, 2022

Annex-I
④

To,

Mr. Yasir Noor Muhammad
S/O Ghous Muhammad Khan
Street Haji Noor Muhammad, Jungle Khel, Kohat.

22/12/2022

Subject:- NOTICE.

You have been found absent from duty from the last one and half years without any application/intimation/prior approval of the competent authority. This act on your part is tantamount to misconduct and liable to be proceeded under E&D Rules-2011.

You are therefore, directed to immediately report for duty and also explain the reason of absence within three days of the receipt of this notice, failing which disciplinary proceeding will be initiated against you under E&D Rules-2011.

SECTION OFFICER (GENERAL)

Copy to :

- 1- Deputy Commissioner, Kohat w/r to his letter No.689/DC-K1/LC dated 7/2/2022.
- 2- PA to Deputy Secretary (Admn) Home Department

SECTION OFFICER (GENERAL)

Attested
Section Officer (Litigation-II)
Home & Tribal Affairs Deptt.
Khyber Pakhtunkhwa



Annex-II

OFFICE OF DEPUTY COMMISSIONER,
DISTRICT KOHAT

No. 689-91 /DC-KT/LC.

Dated Kohat the, 8-12- 2022

Admission
23/12/22

Deputy Commissioner Kohat

To,

The Secretary,
Home & TAs Department Government of
Khyber Pakhtunkhwa, Peshawar

SUBJECT:- SURRENDER OF SERVICE OF MR. NOOR MUHAMMAD YASIR ASSISTANT PROGRAMMER (BPS-16) COMPUTERIZATION OF ARMS LICENSE BRANCH DC OFFICE KOHAT.

Respected Sir,

Reference to the subject noted above and to say that Mr. Noor Muhammad Yasir Assistant Programmer (BPS-16) has not jointed his official duty, though he has assumed charge on 13-07-2021, but still absent from official duty. Therefore, his services may please be surrendered for the best public interest please.

Deputy Commissioner
Kohat

CC:

1. The Deputy Secretary (Admin) Home & TAs Department Government of Khyber Pakhtunkhwa, Peshawar.
2. The Section Officer (General) Home & TAs Department Government of Khyber Pakhtunkhwa, Peshawar.

Deputy Commissioner
Kohat

Attended
Section Officer (Litigation-III)
Home & TAs Affairs Deptt.
Khyber Pakhtunkhwa

INQUIRY REPORT

NAME OF INQUIRY OFFICERS.

1. Mr. Israr Ahmad (PMS) BPS-18, Deputy Secretary (PFSC) Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
2. Mr. Nisar Ahmad (PMS) BPS-17, Section Officer (Prisons-I), Home & Tribal Affairs Department, Khyber Pakhtunkhwa

Attest
Section Officer (Litigation-II)
Home & Tribal Affairs Deptt.
Khyber Pakhtunkhwa

INTRODCTION / BACKGROUND.

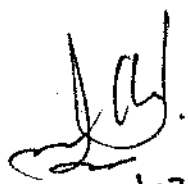
1. The undersigned has been nominated as Inquiry Officer vide Home & Tribal Affairs Department Khyber Pakhtunkhwa vide Notification No.E&A/HD/10-1/2017 dated 22.2.2023 to conduct facts finding inquiry against Mr.Noor Muhammad Yasir, Assistant Programmer (BPS-16) of computerization of Arms License, presently posted in DC Office Kohat, regarding his willful absence as well as casual attitude towards official duties (Page-2/C). Charge Sheet and Statement of allegations is (Page-3-4/C). Surrender letter of DC Kohat is at (Page-5/C). Notice to the accused i.e Mr.Noor Muhammad Yasir, Assistant Programmer (BPS-16) of computerization of Arms License, presently posted in DC Office Kohat, is at (Page-6/C). Publication of absence is at (Page-7/C). Reply of the accused Mr.Noor Muhammad Yasir, Assistant Programmer (BPS-16) of computerization of Arms License, presently posted in DC Office Kohat, is at (Page-8/C).

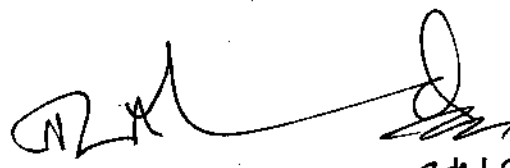
B. PROCEEDINGS.

2. On receipt of Inquiry Notification 23.2.2023, summon notices were issued to the accused, Deputy Commissioner Kohat and Section Officer(General) Home & Tribal Affairs Department, Khyber Pakhtunkhwa were issued (Page-9/C) vide Section Officer (Prisons-I), Home & Tribal Affairs Department letter No.SO(Prisons-I)HD/8-4/2020 dated 23.2.2023 to attend the office of Inquiry Officers on 28.2.2023 at 1400 hours. The DC Kohat and Section Officer (General) were requested to produce the original record.

3. The accused Official and Section Officer (General) representative attended the office on 28.2.2023. The Deputy Commissioner Kohat Representative did not attend the office. The accused recorded his statement (Page-10/C). He stated that:

“The Deputy Commissioner Kohat has showed me absence from duty, which is not possible, the complainant must have misunderstood and reported false news about my absence”.


24/03/23


24/3/23

Attended
Section Officer (Litigation-II)
Home & Tribal Affairs Deptt.
Khyber Pakhtunkhwa

4. Another notice to Deputy Commissioner Kohat was issued for 1.3.2023 alongwith original record (P-11/C). The Deputy Commissioner Kohat representative attended the office on 1.3.2023. He recorded his statement, but could not produce attested copy of record i.e attendance Register etc. He has been directed to produce attested copies of the record. The Deputy Commissioner Kohat representative (MirAjam Khan License Clerk) produced the original record on 3.3.2023 at 1500 hours through his Naib Qasid as special messenger.

5. Attendance Register photo copies is at (P-15-54/C). Transfer order of the accused from Deputy Commissioner Hangu to Deputy Commissioner Kohat office is at (P-13/C). Charge Assumption in Deputy Commissioner Kohat office of the accused on 15.7.2021 is (P-14/C).

C. **FINDINGS.**

6. After perusal of record, written statement of the accused, written statement of DC Kohat representative, the following are the findings:

- i. The accused remained absent w.e.f 1.8.2021 to 19.2.2023 (1 year 9 months & 19 days) as per record of DC Kohat (see vide pages 16/c to 54/c).
- ii. SO (Admn) Home Department issued Notice to the accused on 21.12.2022 to immediately report for duty and also to explain reason of absence within three days of the receipt of Notice (vide page 07/C). But the accused didn't bother to respond.
- iii. SO (Admn) Home Department published Notice to the accused in daily "Aaj" on 06.02.2022 to report for duty within 15 days and explain reason of absence (vide page 07/C).

The accused responded on 09 Feb, 2023 with reason of absence being the aged ailing parents and apologized for his late reply. The accused vide his reply to the newspaper notice, has requested for exoneration. (vide page 08/C).

v. The accused recorded his statement before the inquiry committee on 23rd Feb, 2023 and stated that it is incorrect that he remained absent from duty for 19 months (vide page 10/C).

Attested
(Signature)
Section Officer (Litigation-II)
Home & Tribal Affairs Deptt.
Khyber Pakhtunkhwa

(Signature)
26-03-23

(Signature)
24/3/23

D. Recommendations

7. The following are recommendations of Inquiry Committee.

1. the accused remained willfully absent from duty for 01 year, 09 months and 22 days which clearly indicates lack of interest. His recorded statement shows variation vis-a-vis his submitted reply in response to Daily Aaj published notice.
2. According to the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, Rules 4.1 (a) (ii) & iii, the following penalties have been imposed on the accused namely Noor Muhammad Yasir, Assistant Programmer (BPS-16) office of Deputy Commissioner Kohat:-

- i. Withholding of promotion for 2 years and stoppage of 2 annual increments with immediate effect.
- ii. Recovery of salary w.e.f 1.8.21 to 22.2.2023.

The inquiry is submitted please.

Assessed

[Signature]

Joint Officer (Litigation-II)
 Law & Tribal Affairs Deptt.
 Khyber Pakhtunkhwa

[Signature]

24-03-23

[Signature]

24/3/23

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No.2439/2023


Noor Muhammad Yasir..... (Appellant)

VERSUS

**Additional Chief Secretary Home and Tribal Affairs Department, Government of Khyber
Pakhtunkhwa (Respondents)**

AFFIDAVIT

I Mr. Muhammad Abid Majeed, Additional Chief Secretary Govt. of Khyber Pakhtunkhwa, Home & Tribal Affairs Department solemnly affirm that contents of the Parawise comments is / true and correct to the best of my knowledge and belief that nothing has been concealed from this Honourable Court. It is further stated on oath that in this appeal, the answering respondents, neither has been placed ex-parte nor their defence has been struck off.


Dependent
17301-1396501-9

Additional Chief Secretary
Home & T.As Department
Khyber Pakhtunkhwa.

~~ATTESTED~~
Miss Rozina Qureshi
Advocate
OATH COMMISSIONER
Judicial Complex Peshawar

28 - 08 - 2024 .



GOVERNMENT OF KHYBER PAKHTUNKHWA,
HOME & TRIBAL AFFAIRS DEPARTMENT
homedepartmentlegalcell@gmail.com
Phone No. 091-9213709, Fax No. 091-9210201

Dated 25th June, 2024

AUTHORITY LETTER

Mr. Albert David, CNIC No. 17301-3785363-7 Section Officer Litigation-II Section, Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department is hereby authorized for submission of Parawise comments in SA-2439/2023 Titled Noor Muhammad Yasir on behalf of Additional Chief Secretary Home & Tribal Affairs Department.

Additional Chief Secretary
Government of Khyber Pakhtunkhwa
Home and Tribal Affairs Department
Additional Chief Secretary
Home & T.As Department
Khyber Pakhtunkhwa.