

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 1050/2024

BEFORE: MISS FAREEHA PAUL ... MEMBER (E)

Mr. Sohail Akbar, Primary School Teacher (BPS- 12), GPS Kunji  
Katlang, Mardan. .... (Appellant)

Versus

1. The Director Elementary & Secondary Education Department  
Khyber Pakhtunkhwa Peshawar.
2. The District Education Officer (M), District Mardan.  
.....(Respondents)

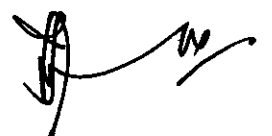
Abdullah Khan, Advocate ... For appellant.

Date of Institution.....	26.07.2024
Date of Hearing.....	03.09.2024
Date of Decision.....	03.09.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** Instant appeal has been filed under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 21.02.2020 whereby appointment order of the appellant was withdrawn. It has been prayed that on acceptance of the appeal, the impugned order dated 21.02.2020 might be set aside and the appellant be reinstated into service with all back benefits alongwith any other remedy which the Tribunal deemed appropriate.

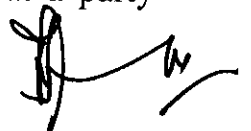
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed against the post of PST (BPS- 12) on adhoc basis vide order dated 02.04.2019. He submitted his charge report at GPS Kunj, District Mardan and started performing his duty. He preferred an application for study leave abroad i.e Xingian University Uramqi, China,



from September 2019 to July 2022, before the competent authority but no response was received by him. He went abroad. During study at China, the concerned state was affected by the Covid-19 pandemic and all the educational institutions were closed and the appellant left for his native country, Pakistan. He visited the concerned office for re-joining his duty against the post of PST but the concerned authority was not willing to accept his request. Finally, the appellant submitted departmental appeal before respondent No. 2 followed by writ petition No. 3719-P/2023 and during pendency of the writ petition the respondent department submitted comments/reply and it came to the knowledge of the appellant that his appointment order had been withdrawn vide order dated 21.02.2020. Feeling aggrieved he preferred departmental appeal but no reply was received; hence the instant service appeal.

3. Preliminary arguments heard and the case file alongwith connected documents perused in detail.

4. Against the impugned order dated 21.02.2020, departmental appeal was preferred by the appellant on 28.03.2024 which was badly time barred by more than four years. There is no application for condonation of delay with the departmental appeal. The august Supreme Court of Pakistan in a judgment reported as 2023 SCMR 291 titled "Chief Engineer Gujranwala Electric Power Company (GEPCO) Versus Khalid Mehmood and others", held that the intention of the provisions of the law of limitation was not to give a right where there was none, but to impose a bar after the specified period authorizing a litigant to enforce his existing right within the period of limitation. The august court had gone to the extent of saying that a party



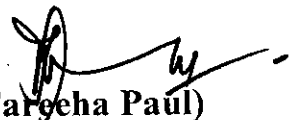
could not sleep over their right to challenge an order and that it was bound to do so within the stipulated and prescribed period of limitation before the proper forum.

5. From the record, it was extremely clear that the appellant did not qualify for the study leave for which a minimum service of five years was required under the rules. It was also evident that he did not even get the NOC for applying for the course in China which was a violation of the rules as he was required to get NOC by the Provincial Government at the time of applying for the course he was intending to attend. When learned counsel for the appellant was confronted with the question whether the appellant had declared himself a government servant in his passport, he stated that he travelled as an ordinary citizen and was still in China.

6. In view of the above discussion, there is no doubt that the appellant did not qualify for study leave under the rules and he proceeded abroad without the permission of competent authority, which was a clear violation of the rules. Moreover, he did not declare himself a government servant in his passport and travelled as an ordinary citizen of Pakistan, which tantamounts to concealment of facts also.

7. In view of the foregoing, the appeal in hand is dismissed in *limine*, being devoid of merit. Consign.

8. ***Pronounced in open Court at Peshawar and given under my hand and the seal of the Tribunal this 03<sup>rd</sup> day of September, 2024.***

  
(Farzeha Paul)  
Member(E)

SA 1050/2024

03.09 2024 01. Mr. Abdullah Khan, Advocate for the appellant present.  
Preliminary arguments heard and record perused.

02. Vide my detailed judgment consisting of 03 pages, the appeal in hand is dismissed in *limine*, being devoid of merit.  
Consign.

03. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 3<sup>rd</sup> day of September, 2024.*

  
(FARZEHA PAUL)  
Member (E)

\*Fazle Subhan PS\*