

(1)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1713 / 2023

Pir Nosh S/O Muhammad Nisar,
Mohallah Mazid Khel, P.O Kalabat, Topi, Swabi.
(Ex-PST GPS No.1 Kalabat Swabi)

..... (Appellant)

VERSUS

1. Secretary Elementary and Secondary Education, KP Peshawar
2. Director E&SE Dept. KP Peshawar
3. District Education Officer (M) Swabi


..... (Respondents)

INDEX

Sr.	Description of Document	Annexure	Pages
1	Para-wise Comments alongwith Affidavit		2-8
2	Abserit Notices by SEDO (M) Topi Swabi	A	9-10
3	Absent Notice Published in News Paper	B	11
4	Reinstatement Appeal Rejected by Director	C	12
5	Removal from Service	D	13

17.10.2024

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District Education Officer
Male Swabi
Respondent No.3

(2)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1713 / 2023

Pir Nosh S/O Muhammad Nisar,
Mohallah Mazid Khel, P.O Kalabat, Topi, Swabi.
(Ex-PST GPS No.1 Kalabat Swabi)

Khyber Pakhtunkhwa
Service Tribunal
Case No. 16938
Dated 18-10-24

..... (Appellant)

VERSUS

1. Secretary Elementary and Secondary Education, KP Peshawar
2. Director E&SE Dept. KP Peshawar
3. District Education Officer (M) Swabi

..... (Respondents)

PARA-WISE COMMENTS ON BEHALF OF THE RESPONDENTS.

CONTROVERSY:

Mr. Pir Nosh S/O Muhammad Nisar (Ex-PST GPS No.1 Kalabat Swabi) was appointed as PST dated: 21-05-1987 in the respondent department. He willfully absented himself w.e.f 17-02-2014. He was issued three absent notices by SDEO (M) Topi Swabi (dated 23-10-2014; 12-11-2014; and 13-12-2014) to resume his duty, but he failed to comply with the orders and remained absent. The competent authority (DEO (M) Swabi) served absent notice upon the appellant through Daily News Paper- Mashriq Peshawar dated 12-01-2015 to resume duty within 15 days, but he remained absent and did not report in response to the absent notice. The DEO (M) Swabi, after having considered the charges and evidences on the record proved, exercised his powers conferred upon him under Section 4 (b) iii of the Khyber Pakhtunkhwa E&D Rules, 2011, imposed the major penalty of Removal from Service upon the appellant vide Endst No. 2503-07/ File No.1/4-DA-15/ Absent PTC (M) dated Swabi the 10-02-2015. The appellant requested for his re-instatement to the Director ESED on dated:13-06-2023, but his appeal was rejected vide Directorate of ESED Endst No. 5328/F.NO/06 /Re-instatement in service/Estab-1 Dated Peshawar the 06-07-2023.

Annex-D

PRELIMINARY OBJECTIONS:

(3)

1. That the service appeal is not maintainable under rule 2.11 of the West Pakistan Pension Rules 1963 which states that no one is entitled for pension or pensionary benefits if he resigned, is removed, or absented himself from duty at the verge of retirement.
2. That the service appeal is badly barred by time, hence not maintainable.
3. That the service appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication; therefore, the same service appeal is liable to be rejected/ dismissed.
4. That the service appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory cost in favor of respondents.
5. That the appellant has not come to the Court/Tribunal with clean hands.
6. That the appellant has concealed the material facts from this Honorable Tribunal.
7. That the appeal is bad for misjoinder and non-joinder of the necessary party.
8. That the appellant has filed the instant appeal just to pressurize the respondents.
9. That the appellant has no cause of action to file the instant appeal.
10. That the appeal is not maintainable in the eye of law.
11. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.
12. That the appellant has no locus standi to file appeal against the respondents.

FACTS:

1. That the para is related to appointment of the appellant and needs no comments.
2. Incorrect, hence denied. The appellant was on extra ordinary leave up to 16-09-2013 and resumed duty on 17-09-2013. He remained on duty up to 14-10-2013, but remained unauthorised absent w.e.f 15-10-2013 to 24-11-2013. Then again he remained on duty w.e.f 25-11-2013 to 16-02-2014. But once again the appellant willfully absented himself w.e.f 17-02-2014 and never resumed his duty. **(Absent Notices attached as Annex-A)**
3. Incorrect, hence denied. The appellant was unauthorised absent and did not respond to the absent notices sent to him by the SDEO (M) Topi, Swabi and DEO (M) Swabi.

- (4)
4. Incorrect, hence denied. The appellant was well aware of the absent notices sent to him through registered post and published in Daily News Paper – Mashriq Peshawar. (Annex- B)
 5. Incorrect, hence denied. The appellant submitted departmental appeal to the Director ESED after a lapse of almost 8 years on 13-06-2023, which was badly time barred and hence was rightly rejected vide Directorate of ESED Endst No. 5328/F.NO/06 /Re-instatement in service/Estab-1 Dated Peshawar the 06-07-2023. (Annex- C)
 6. Incorrect, hence denied. The appellant has got no cause of action to file the instant time barred appeal. The same may kindly be dismissed on the following grounds.

GROUND:

- A. Incorrect, hence denied. The said order is legal, not void and is with lawful authority and tenable before the eyes of law. All the proceedings are under KP E&D Rules, 2011.
- B. Incorrect, hence denied. The appellant has been provided with several opportunities to resume his duty, but he has badly failed. Several absent notices and show cause notices in daily newspaper have been published to give him opportunity to resume his duty but he failed. All the proceedings against him are according to the rules and procedure in the field. He was issued three absent notices by SDEO (M) Topi Swabi (No.1137 dated 23-10-2014; No. 35 dated 12-11-2014; and No. 107 dated 13-12-2014) to resume his duty, but he failed to comply with the orders and remained absent. The competent authority (DEO (M) Swabi) served absent notice upon the appellant through Daily News Paper- Mashriq Peshawar dated 12-01-2015 to resume duty within 15 days, but he remained absent and did not report in response to the absent notice at all.
- C. Incorrect, hence denied. As replied above.
- D. Incorrect, hence denied. All the notices issued to the appellant are attached as Annexure A and B.
- E. Incorrect, hence denied. The appellant has rendered himself liable to be proceeded against him by willfully absenting himself from duty from the date(s) already mentioned above.

- F. Incorrect, hence denied. The respondents have acted as per law and rules in the field.
- G. Incorrect, hence denied. No rules have been violated by the respondents while dealing the case in hand.
- H. Incorrect, hence denied. Already commented in para number B.
- I. Incorrect, hence denied. Already replied above.
- J. Incorrect, hence denied. The appellant has been given fair chance of defending himself and resuming his duty, but he has badly failed.
- K. Incorrect, hence denied. No constitutional rights of the appellant have been violated. Nor has he been discriminated in any way.
- L. Incorrect, hence denied. All the actions and orders of the respondents are in accordance with law and rules in the field.
- M. Incorrect, hence denied. The appellant by absenting himself has proved himself to be unfit for govt service.
- N. Incorrect, hence denied. The impugned order is legal, logical as per KP E&D Rules, 2011; hence tenable and maintainable in the eyes of law.
- O. Incorrect, hence denied. The actions/ orders of the respondents are lawful and in accordance with the rules and regulations in the field.
- P. Incorrect, hence denied. The impugned order is not in violation of any direction/ order of the Honorable Supreme Court of Pakistan.
- Q. That the appellant has nothing concrete to present before the Honorable Service Tribunal; hence, this service appeal is not adjudicable/ maintainable in the eyes of law and deserve to be dismissed outrightly.

Therefore, in view of the above made submissions, it is earnestly prayed that on acceptance of the instance reply to the titled sevice appeal, the appeal in hand may very graciously be dismissed in favour of the Respondent Department in the interest of justice.


Dated: 17 / 10 / 2024

(MASOOD AHMAD)
SECRETARY



AUTHORISED OFFICER
FAIZ ALAM
ADDITIONAL SECRETARY (G)
E&SE Department, Khyber
Pakhtunkhwa, Peshawar
Respondent No.1

(SAMINA ALTAF)
DIRECTOR



AUTHORISED OFFICER
ABDUS SAMAD
DEPUTY DIRECTOR
E&SE Department, Khyber
Pakhtunkhwa, Peshawar
Respondent No.2

Ullah



(MIDRAR ULLAH)
District Education Officer
Male Swabi
Respondent No.3

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1713 / 2023

Pir Nosh S/O Muhammad Nisar,
Mohallah Mazid Khel, P.O Kalabat, Topi, Swabi.
(Ex-PST GPS No.1 Kalabat Swabi)

..... (Appellant)

VERSUS

1. Secretary Elementary and Secondary Education, KP Peshawar
2. Director E&SE Dept. KP Peshawar
3. District Education Officer (M) Swabi

..... (Respondents)

AFFIDAVIT

I, Midrar Ullah, DEO (M) Swabi do hereby solemnly affirm and declare on oath that the contents of the instant para-wise comments submitted by the respondents are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal. It is further stated on oath that in this appeal the answering respondents have neither been placed Ex-Parte nor has their defense been struck off *Cost*.



(Midrar Ullah)
District Education Officer
Male Swabi
Respondent No.3

Dated: 17 / 10 / 2024

OFFICE OF THE DISTRICT EDUCATION OFFICER (M) SWABI

AUTHORITY LETTER

I, Midrar Ullah, DEO (M) Swabi do hereby authorised Mr. Nadeem Akhtar, Head Master GHS Ghulama Swabi for submission of Para-wise comments in Service Appeal No. 1713/2023 case titled Pir Nosh Ex-PST GPS No.1 Kalabat Swabi VS E&SE Department, Govt of Khyber Pakhtunkhwa.

Hence, an authority letter is hereby issued in favor of the above-named officer.



(Midrar Ullah)

District Education Officer

Male Swabi

Respondent No.3

(9)

Annex - A

(16)

Office of the Sub Division Edu:
Officer (Male) Topi
No 11377 dated 23/10 /2014

To

Mr. Pir Nosh S/o Muhammad Nisar
V.P.O Kalabat, Mohallah Mazed Khel
Teh Topi, Distt Swabi

Subject: ABSENCE NOTICE 1ST

Memo,

It is stated that you were on extra ordinary leave up to 16-09-2013 and resumed duty on 17-09-2013 and remain present up to 14-10-2013 and w.e.f 15-10-2013 to 24-11-2013. You were absent from duty and not applied for leave for above mention period. Further according to attendace register you were present from 25-11-2013 to 16-02-2014 and after that w.e.f 17-02-2014, you are still absent from duty.

Therefore, you are directed to attend your duty on receipt of this notice and also explain the reason of willful absence from the duty.

(Signature)

Sub Division Education Officer
(Male) Topi

Endst No 1137-40
Copy to the

- 1) District Education Officer (M) Swabi
- 2) Deputy Commissioner Swabi
- 3) District Monitoring Officer Swabi

(Signature)

Sub Division Education Officer
(Male) Topi

Attested

(Signature)
12-10-24

Amer A

(10)

Reminder 3

Office of the Sub Division Edu:
Officer (Male) Topi

No. _____ / Dated 13/12/2014

To

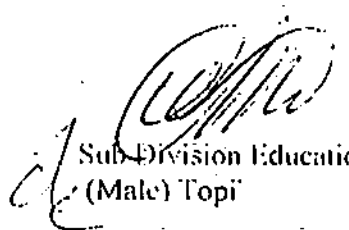
Mr. Pir Nosh S/o Muhammad Nisar
V.P.O Kalabat, Mohallah Mazeed Khel,
Teh Topi, Distt Swabi

Subject: ABSENCE NOTICE 3rd

Memo.

It is stated that you were on extra ordinary leave up to 16-09-2013 and resumed duty on 17-09-2013 and remain present up to 14-10-2013 and w.e.f 15-10-2013 to 24-11-2013. You were absent from duty and not applied for leave for above mention period. Further according to attendance register you were present from 25-11-2013 to 16-02-2014 and after that w.e.f 17-02-2014; you are still absent from duty.

Therefore, you are directed to attend your duty on receipt of this notice and also explain the reason of willful absence from the duty.


Sub Division Education Officer
(Male) Topi

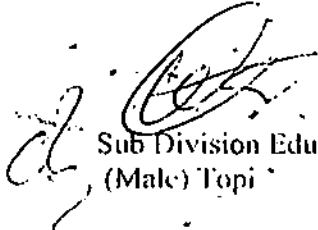
Endst No 107/10

Copy to the

- 1) Deputy Commissioner Swabi
- 2) District Education Officer (M) Swabi
- 3) District Monitoring Officer Swabi

Attested




Sub Division Education Officer
(Male) Topi



(12)

Annex C

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR.

No. 5328 /F.No./06/Re-instatement in Service/Estab-1

Dated Peshawar the 06/07/2023.

To

The District Education Officer
(Male) Swabi.

Subject: **APPEAL FOR RE-INSTATEMENT IN SERVICE**

Memo:

I am directed to refer to the subject cited above and to ask you that appeal in r/o Mr. Pir Nosh Ex-PST GPS No.1 Qalabat District Swabi has been rejected.

I am further directed to ask to inform the appellent concerned accordingly, please.

(Signature) 5/7/2023
Assistant Director (Estab-1)

Directorate of Elementary & Secondary Edu:
Khyber Pakhtunkhwa, Peshawar.

Endst; No. _____/

Copy forwarded to the: -

1. Mr. Pir Nosh Ex-PST GPS No.1 Qalabat District Swabi.
2. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

Assistant Director (Estab-1)

Directorate of Elementary & Secondary Edu:
Khyber Pakhtunkhwa, Peshawar.

Attested

(Signature)

OFFICE OF THE DISTRICT EDUC

SWABI

(23)

NOTIFICATION.

Pir N

removal from service

WHEREAS Mr. Pir Nosh S/O Muhammad Nisar PTC/PST GPS No.1 Kalabat Mohalla Mazid Khel Village & Post Office Kalabat Tehsil Topi District Swabi proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 on account of his willful and un-authorized absence from duty w.e.f. 17.02.2014 and was directed to resume duty by the SDEO(M) concerned vide his office No.1137 dated 23.10.2014, No.35 dated 12.11.2014 and No.107 dated 03.12.2014, but he failed to resume his duty.

AND WHEREAS absentee notice was served upon the accused official Mr. Pir Nosh S/O Muhammad Nisar PTC/PST, GPS.No.1 Kalabat Mohalla Mazid Khel Village & Post Office Kalabat Tehsil Topi District Swabi through "Daily News Paper "Mashriq Peshawar dated 12.01.2015 to resume duty with in 15 days but he remained absent and did not report for duty in response of the above absence notice.

AND WHEREAS the competent authority i.e the DEO (Male) Swabi after having considered the charges and evidence on record is of the view that the charges of willful and un-authorized absence from duty against the accused have been proved.

NOW, THEREFORE, in exercise of the powers conferred under Section 3 b (iii) of the Khyber Pakhtunkhwa Removal from service under (Efficiency & Discipline) Rules 2011, the competent authority is pleased to impose the major penalty of removal from service upon Mr. Pir Nosh S/O Muhammad Nisar PTC/PST, GPS No.1 Kalabat Mohalla Mazid Khel Village & Post Office Kalabat Tehsil Topi District Swabi with immediate effect. The period of his absence from duty w.e.f. 17.02.2014 till the issuance of this order be treated as un-authorized absence from duty with out pay.

(NISAR MUHAMMAD)
DISTRICT EDUCATION OFFICER
(MALE) SWABI

Encls: No. 2503-07 / F.No.1/4-DA-15/Absent PTC (M) dated Swabi the: 10/02/2015.

- 1. Director Elementary & Secondary Education Khyber Pukhtunkhwa, Peshawar.
- 2. District Accounts Officer, Swabi.
- 3. Sub-Divisional Education Officer (Male) Topi w/r to his No.153 dated 15.12.2014
- 4. Head Teacher GPS No.1 Kalabat Tehsil Topi District Swabi.
- 5. Mr. Pir Nosh S/O Muhammad Nisar PTC/PST, GPS No.1 Kalabat Mohalla Mazid Khel Village & Post Office Kalabat Tehsil Topi District Swabi (Under Registered cover).

379

14-02-2015

E/B

DISTRICT EDUCATION OFFICER
(MALE) SWABI

~~Endorse and~~
Keep it in your
office file for
record.

103
15
Attended
Maha

(Signature)