

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

SERVICE APPEAL NO.1046/2024


Mr. Wasal KhanAppellant

Vs

Director E & SE & Others.....Respondents

INDEX

S#	DOCUMENTS	ANNEXURE	PAGE
1.	Para wise Reply		1-2
2.	Authority Letter		3
3.	Affidavit		4
4.	Copy of Supreme Court Judgment	A	5-6



**Mst. Sofia Tabassum
District Education Officer (Female),
Peshawar.
Respondent No.2**

1

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

SERVICE APPEAL NO.1046/2024

Mr. Wasal KhanAppellant

Vs

Director E & SE & Others.....Respondents

REPLY ON BEHALF OF RESPONDENTS.

Respectively Sheweth:

The Respondent submits below:

Khyber Pakhtunkhwa
Service Tribunal

Case No. 18154

Date 21-11-24

PRELIMINARY OBJECTIONS:

1. That the Appellant has got no cause of action /locus standi.
2. That the Appellant has concealed material facts from this Hon,ble Tribunal.
3. That the Appellant has been estopped by her own conduct to file the instant appeal before this Hon'ble Tribunal.
4. That the instant Appeal is badly time barred.
5. That the instant Appeal is not maintainable in its present form.
6. That the instant Appeal is bed for mis- joinder and non- joinder of the necessary parties.
7. That the Appellant has not come with clean hands to this Hon'ble Tribunal.
8. That the instant Appeal is barred by law.

REPLY ON FACTS.

1. That Para No.1 & 2 pertains to record.
3. That in reply to Para No.3, it is submitted that the Appellant was wilful absent from the duty he did not inform the respondent department about his any criminal case. The appellant submitted only one application vide Dairy No 1165 dated 22/10/2012 and after the submission of application the appellant again disappeared and did not respond any competent authority (SDEO and DEO (F)).
4. That Para No.4 & 5, It is submitted that in the light of enquiry the appellant was reinstated in to service on dated 14/03/2017 and his absconded period was adjusted into leave without pay and earned leave. Furthermore the appellant did not perform any duty since 2012 till Reinstement therefore the Appellant cannot be entitle for the grant of back benefits. Furthermore the Respondent Department already adjusted his absentee period into leave and it is not possible

to give back benefit for five years without any duty, According to August Spume Court Judgment "no work no Pay". (Copy of August Supreme Court Judgment is attached as Annexure A).

6. That Para No.6 is Legal.

GROUND

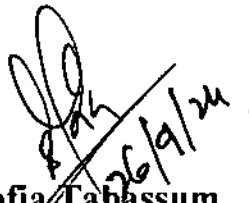
- A. Ground-A is incorrect, misleading and against the facts. The detail reply is also given in the above facts Paras.
- B. Ground-B is also incorrect, misleading and against the facts.
- C. Ground-C is also incorrect, misleading and against the facts. The Respondent already had favoured appellant by covering his period from 2006 till 2012, as he was reinstated on 14/03/2017 and after reinstatement he resumed his duty therefore the respondent department cannot give back benefits from 2012.
- D. Ground-D is incorrect. As replied in facts.
- E. Ground-E is also incorrect and misleading. As replied in facts.
- F. That Ground-F is incorrect and misleading. As replied in facts.
- G. That Ground-G is also incorrect and misleading. The detailed reply has been given in the above facts Para.
- H. That Ground-H is incorrect and misleading. The Appellant was ^{not} agreed by any action of respondent Department.

It is therefore, very humbly prayed that on acceptance of this reply, the instant appeal may very kindly be dismissed with cost.

**SAMINA ALTAF
DIRECTOR**



**AUTHORIZED OFFICER
ABDUS SAMAD
DEPUTY DIRECTOR
E&SE Department Khyber,
Pakhtunkhwa, Peshawar
Respondent No1**



**Mst. Sofia Tabassum
District Education Officer (Female),
Peshawar.
Respondent No.2**

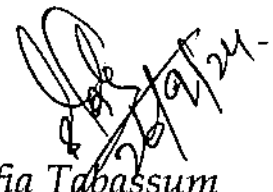


3

Office of the
District Education Officer, Female
Peshawar
(Phone: 091-9225459
Email: litigationdeofemalepsh@gmail.com)

AUTHORITY LETTER

It is Certified that Mst. Beenish Ashraf, ADEO (Litigation) of the office of District Education Officer (Female), Peshawar is here by authorized to attend the Hon'ble Service Tribunal on behalf of Respondent No. 1 & 2.


Sofia Tabassum
District Education Officer
(Female) Peshawar.
Respondent No.1 & 2.

4

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

SERVICE APPEAL NO.1046/2024

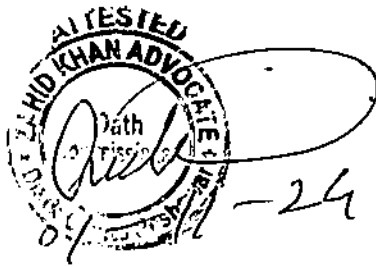
Mr. Wasal KhanAppellant


Vs

Director E & SE & Others.....Respondents

AFFIDAVAT

I Sofia Tabassum District Education Officer (Female) Peshawar Respondent No. 1 & 2 do solemnly affirmed and declare on oath the content of this **Para wise Reply** on behalf of Respondent No. 1 & 2 are correct to the best of knowledge and that nothing has been concealed from this Hon'ble Tribunal. It is further stated that in this reply respondent No. 1 & 2 have neither been ex-parte nor their defense has been struck off/cost.




Sofia Tabassum
District Education Officer
(Female) Peshawar.
Respondent No. 1 & 2.

Annexure - A 5-6
5

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN (PROCESS)---Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through Chairman, OGDC Head Office, Islamabad---Respondent

Civil Petition For. Leave to Appeal No-51 of 2002, decided on 11th September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal service Tribunal, Islamabad, in Appeal No. 1076(R)CE of 2000)

(a) Civil service-

---Pay, entitlement to---When there is no work, there is in no pay.

(b) Civil service-

--- Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at original place, where he was paid salary for about three years. ---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant-- Validity---Civil servant had not performed his duties either at original place or at transferred place, thus, was not entitled to salary---Period for which refund of salary was effected from civil servant was the period for which, he had not worked---When there was no work, there was no pay---Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made out---Supreme Court dismissed petition for leave to appeal in circumstances---Constitution of Pakistan (1973), Art. 212(3).

Sadiq Muhammad Warraich, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record (absent) for Petitioner.

Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocateai-Record for Respondent.

Date of hearing: 11th September, 2002.

Assesd
e

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.---Petitioner seeks leave to appeal against that judgment of the Federal Service Tribunal,, Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No. 1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations; .1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay, ordered by the Court as E.O.L is injustice with me."

On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-1999 (PR244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty.

"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para. 141-A, please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

6. Sardar Muhammad Aslam, learned Dy.A.G. further pointed out that recovery was already been effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted, to his Managerial post. ,

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his' i duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S.A.K./N-100/S

Petition dismissed.

6.
Attested
