

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No.1602/2022**

Date of presentation of Appeal      10.11.2022  
Date of hearing                              06.11.2024  
Date of Decision                              06.11.2024

Dilawar Hussain, S/O Sattar Ali, R/O Tehsil Upper Kurram, District Kurram.

.....(Appellant)

Versus

1. The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Director (Estab) Merged Areas, Directorate of E&SE Khyber Pakhtunkhwa, Peshawar.....Respondents)

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.


**PRESENT**

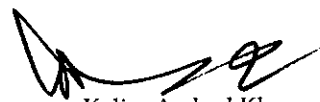
1. Syed Noman Ali Bukhari, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs. 100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 6<sup>th</sup> day of November, 2024.

  
Rashida Bano  
Member (Judicial)

  
Kalim Arshad Khan  
Chairman



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.1602/2022

Dilawar Hussain

Versus

Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
<p>Order-16 5<sup>th</sup> November, 2024.</p>	<p>Present</p> <ol style="list-style-type: none"><li>1. Syed Noman Ali Bukhari, Advocate on behalf of appellant present.</li><li>2. Mr. Naseer Uddin Shah, Assistant Advocate General for the respondents present.</li><li>3. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Being an old case of the year 2022, the same is adjourned for tomorrow i.e 06.11.2024 before D.B. P.P given to the parties.</li></ol> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p>*Kaleem*</p>



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No.1602/2022

Dilawar Hussain

versus

Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
Order-24 06 <sup>th</sup> November, 2024.	<p><b><u>Kalim Arshad Khan, Chairman</u></b></p> <p>Present:</p> <ol style="list-style-type: none"><li>1. Syed Noman Ali Bukhari, Advocate, on behalf of appellant.</li><li>2. Mr. Naseer Ud Din Shah, Assistant Advocate General, on behalf of respondents.</li><li>3. Vide our detailed judgment of today, placed on file, by allowing the instant service appeal, we set aside the impugned order dated 02.11.2021 and convert the intervening period into leave of the kind due. Costs shall follow the event. Consign.</li><li>4. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 6<sup>th</sup> day of November, 2024</i></li></ol> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Munazem Shah*</small></p>

respondents through a written application, yet oral request was not denied.

8. Therefore, by allowing the instant service appeal, we set aside the impugned order dated 02.11.2021 and convert the intervening period into leave of the kind due. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 6<sup>th</sup> day of November, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

*\*Muzam Shah\**

5. Perusal of record reflects that appellant, Dilawar Hussain, permanent resident of Parachinar, District Kurram, faced the issue of law & order situation due to which it was difficult to attend the duty station on 24.04.2021. He allegedly informed the authorities regarding the situation, but on 21.06.2021, he was served with show cause notice. The said show cause notice was replied by him through affidavit, narrating the story of that locality with further commitment for regular performance of his duty. However, vide impugned order dated 02.11.2021, he was removed from service for unauthorized absence for many days, while in the show cause notice, one day absence has been mentioned. Stance of the respondents was that appellant was absent and had hired a private person for duty.

6. When a civil servant has any issue that bars in attending the duty, in such scenario, he/she has to inform the authorities through written request for leave. While the appellant has allegedly just telephonically informed his high-ups. So far as the issue of hiring private person as proxy teacher is concerned, the Deputy DEO concerned had proposed for registration of FIR. Why the authority was hesitant in doing so?

7. Be that as it may, the absence period is just one day and the punishment does not commensurate with the one day absence only and that too that the appellant had allegedly informed the respondents on telephone. True that the appellant ought to have applied for leave or have informed the

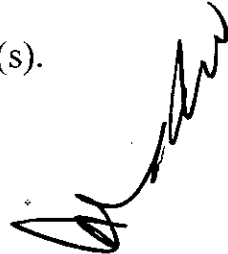
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**JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Brief facts of the case, as per averments of the appeal, are that appellant was serving as Physical Education Teacher (PET) in the Education Department; that on 21.06.2021 he was served with a show cause notice for his absence which was replied by him that due to law & order situation, he could not attend his duties; that vide order dated 02.11.2021, major penalty of removal from service was imposed upon him; that feeling aggrieved, he filed departmental appeal on 22.11.2021 but the same, after correspondence between the respondents, was dismissed vide order dated 14.10.2022, hence, this appeal.

2. 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 of respondents was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**RASHIDA BANO** ... **MEMBER (Judicial)**

***Service Appeal No.1602/2022***

Date of presentation of Appeal.....10.11.2022

Date of Hearing.....06.11.2024

Date of Decision.....06.11.2024

**Dilawar Hussain (PET-15) S/O Sattar Ali P/O Para Chinar, Luqman Khel, Tehsil Upper Kurram District Kurram.**

.....(***Appellant***)

Versus

1. **The Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **The Deputy Director** (Estab) Merged Areas, Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. **The Deputy District Education Officer (Male)** Lower & Central Kurram Sadda, District Kurram.
4. **The District Education Officer** District Kurram.
5. **The District Monitory Officer** Kurram.
6. **Assistant Director** Education (Estab) Directorate of E&SE Peshawar.

.....(***Respondents***)

Present:

Syed Noman Ali Bukhari, Advocate.....For the appellant  
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For respondents

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 02.11.2021 AND ORDER DATED 14.10.2022 WHEREBY THE SERVICE OF APPELLANT HAS REMOVED AND THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REGRETTEED FOR REINSTATEMENT ON ACCOUNT OF ABSENCE FOR NO LEGAL REASON TO BE DECLARED AS ILLEGAL, UNJUST, WITHOUT THE NATURAL JUSTICE AND ILLEGAL ENCROACHMENT UPON THE LEGAL AND VALID RIGHTS OF THE APPELLANT.**

