

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT SWAT.

Service Appeal No. 7905/2021

Date of Institution ... 15.12.2021

Date of Decision ... 09.02.2023

Irfan-ud-Din (Chowkidar G.G.P.S Aligrama, Kabal, Swat)

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa Secretary Elementary & Secondary
Education Khyber Pakhtunkhwa at Peshawar and 02 others.

... (Respondents)

MR. SHOUKAT ALI,
Advocate

For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

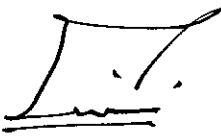
For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts surrounding the instant service appeal are that the appellant was serving as Chowkidar in Government Girls Higher Secondary School Kabal District Swat, when departmental action was taken against him on the allegations of absence from duty and he was removed from service vide order dated 04.01.2018. The departmental appeal of the appellant was turned down vide order dated 29.12.2020, where-after he submitted



mercy petition, which too was rejected vide order dated 09.08.2021 on the ground that the appellate Authority had already turned down the departmental appeal of the appellant. The appellant has now approached this Tribunal through the instant appeal for redressal of his grievance.


2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. We have heard the arguments of learned counsel for the parties and have perused the record.

5. A perusal of the record would show that the appellant was removed from service vide order dated 04.01.2018 passed by the District Education Officer (F) Swat, which was challenged by the appellant through filing of departmental appeal on 24.09.2020, however the same was turned down vide order dated 29.12.2020. The appellant was required to have challenged the aforementioned order dated 29.12.2020 through filing of service appeal but he submitted an application/mercy petition before the District Education Officer (F)

Swat, which was rejected vide order dated 09.08.2021 on the ground that the appellate Authority had already turned down the departmental appeal of the appellant vide order dated 29.12.2020. The appellant then filed another appeal before the Director Elementary & Secondary Education Khyber Pakhtunkhwa, whereby the order dated 09.08.2021 passed by the District Education Officer (F) Swat was challenged. It was during the pendency of second departmental appeal that the appellant invoked the jurisdiction of this Tribunal through filing of instant service appeal on 15.12.2021.



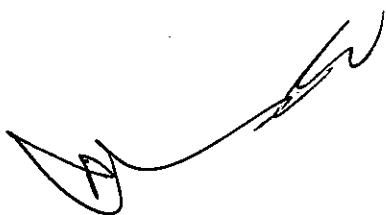
6. The departmental appeal of the appellant was declined vide order dated 29.12.2020 and the appellant was legally required to have challenged the same by way of filing of service appeal within a period of 30 days of communication of such order, however he has filed the instant appeal on 15.12.2021 i.e after a lapse of about 01 year. Filing of successive departmental appeal by the appellant could not legally enlarge the period of limitation and the instant service appeal of the appellant is thus time barred. The appellant has not even bothered to file an application for condonation of delay. It is well settled that law favours the diligent and not the indolent. As mentioned above, the appellant remained indolent and did not agitate the matter before the Service Tribunal within the period prescribed under the relevant rules. August Supreme Court of Pakistan in its judgment reported as PLD 2015 SC 212 has held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time

provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself."

7 This Tribunal can enter into merits of the case only, when the appeal is within time. Worthy Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation, its merits need not to be discussed.

8. Consequently, the appeal in hand stands dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.02.2023



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT SWAT



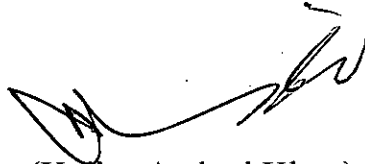
(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

ORDER
09.02.2023

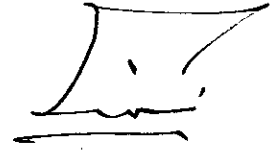
Learned counsel for the appellant present. Mr. Sultan Nabi, ADEO alongwith Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.02.2023



(Kalim Arshad Khan)
Chairman
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat

08th Feb, 2023

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Pindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant says that he is not prepared and will be able to argue the case tomorrow. Adjourned. To come up for arguments on 09.02.2023 before the D.B at Camp Court Swat.



(Salah-ud-Din)
Member (J)
Camp Court Swat



(Kalim Arshad Khan)
Chairman
Camp Court Swat