

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 3223/2021

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Mr. Muhammad Dawood PST (BPS-12) GPS Kamala, U/C Khadagzai
District Dir Lower..... (*Appellant*)

VERSUS

1. The Secretary E&SE Department Khyber Pakhtunkhwa Peshawar.
2. The Director E&SE Department Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (Male) District Dir Lower.
4. The District Accounts Officer District Dir Lower..... (*Respondents*)

Present:

KAMRAN KHAN,
Advocate

--- For Appellant

MUHAMMAD JAN,
District Attorney

--- For respondents

Date of Institution.....22.02.2021

Date of Hearing.....10.01.2023

Date of Decision.....10.01.2023

JUDGEMENT

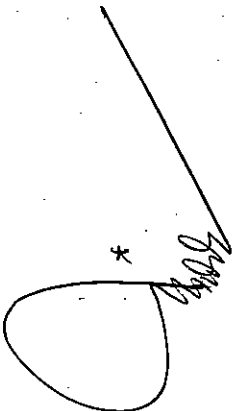
MIAN MUHAMMAD, MEMBER(E):- The instant service appeal
has been instituted with the prayer copied as follows;

*“On acceptance of this appeal the impugned order dated
09.07.2013 may kindly be modified and the appellant may
please be appointed from the date when his other
colleagues were appointed i.e. from 26.11.2011 with all
back benefits. Any other remedy which this august
Tribunal deems fit in the circumstances of the case may
also be awarded to appellant”.*

02. Brief facts of the case as per memorandum of the service appeal, are that various teaching posts including the post of Primary School Teachers were advertised by respondent No. 3 in District Dir Lower. The appellant applied for the post of Primary School Teacher and he secured first position in merit list of Union Council Khadagzai, District Dir Lower. The respondent department issued appointment order against all the vacant posts of Primary School Teachers vide office order dated 26.11.2011 in all Union Councils but the appellant was ignored despite meritorious position and vacancy in Union Council Khadagzai. Feeling aggrieved, the appellant filed Writ Petition No. 26-M/2012 before the honourable Peshawar High Court, Mingora Bench which was allowed vide judgement dated 04.07.2013 and the respondents were directed to consider the case of the appellant for appointment against the said post positively within one month. Thereafter, the appellant was appointed as Primary School Teacher vide order dated 09.07.2013 w.e.f. taking over charge of the post but not from the date when his other colleagues were appointed i.e. w.e.f 26.11.2011. Feeling aggrieved, the appellant filed departmental appeal which was not responded within the statutory period, hence the instant service appeal was filed on 22.02.2021.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant was denied appointment despite the fact that he was on top of the merit list of Union Council Khadagzai District Dir Lower at the relevant time. He next contended that on the direction of honourable Peshawar High Court, Mingora Bench, the appellant was appointed as Primary School Teacher vide order dated 09.07.2013 by the respondents with effect from the date of taking over the charge, which is against the law and rules. He next contended that the respondents were required to have appointed the appellant from the date i.e. 26.11.2011 when his other colleagues were appointed through the same recruitment process based on the same advertisement, hence the principle of natural justice demands that the appellant must have been appointed from the date when his other colleagues were appointed, with all back benefits.



05. Learned District Attorney for the respondents contended that the appellant was though appointed as Primary School Teacher vide order dated 09.07.2013 in the light of directions of the honourable Peshawar High Court, Mingora Bench, however there was no such direction for issuance of appointment order of the appellant from the date when his other colleagues were appointed. He next contended that the appellant filed departmental appeal on 28.10.2020 against his order of appointment, which is badly time barred, hence his subsequent service appeal is also liable to be set-aside.

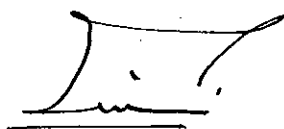
06. It is evident from the record that the appellant was appointed against the vacant post of Primary School Teacher vide impugned order dated 09.07.2013 with effect from the date of taking over the charge and not from the date of appointment, when his other colleagues were

appointed. The appellant challenged the impugned order through departmental appeal on 28.10.2020 which was not responded within the statutory period, hence the service appeal was filed in the Service Tribunal 22.02.2021.

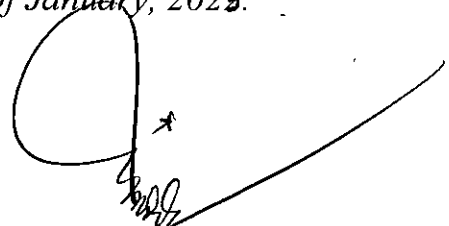
07. The departmental appeal of the appellant was badly time barred. The settled proposition of law dictates that when an appeal of the civil servant is time barred before the appellate authority, then the appeal before the Service Tribunal is also not competent and maintainable. Reliance is placed on PLD 1990 Supreme Court 951, 2006 SCMR 453 and 2007 SCMR 513. This Tribunal can take merits of the case into consideration only when the appeal is within time. The august Supreme Court of Pakistan in its judgement reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation then its merits need not to be discussed.

08. As a sequel to the foregoing discussion, the instant service appeal being not maintainable, stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 10th day of January, 2023.*



(SALAH UD DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)

ORDER

10.01.2023

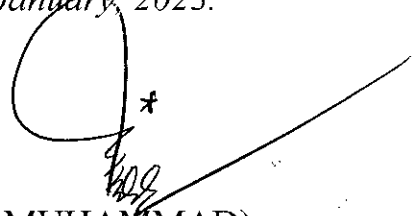
Mr. Kamran Khan, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

02. Vide our detailed judgement of today separately placed on file consisting of (04) pages, the instant service appeal being not maintainable, stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 10th day of January, 2023.*



(SALAH UD DIN)
MEMBER (J)





(MIAN MUHAMMAD)
MEMBER (E)

07.09.2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for respondents present.

Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment on the ground that he has not prepared the brief. Last opportunity is granted for arguments. To come up for arguments on 16.11.2022 before D.B.


(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman


16.11.2022

Counsel for the appellant present.

Muhammad Jan learned District Attorney for respondents present.

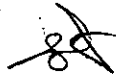
Former requested for adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 10.01.2023 before D.B.


(Fareeha Paul)
Member (E)

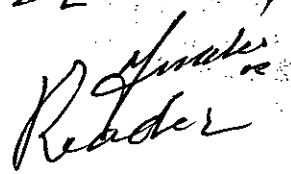

(Rozina Rehman)
Member (J)

SCANNED
Fareeha Paul

24.11.2021 Proper D.B is not available, therefore, case is adjourned to 4 / 3 / 2022 for the same as before.


Reader

4-3-22 Due to Retirement of the Hon'ble Chairman
The case is adjourned to come up for the
Same as before on 13-6-22


Reader

13th June, 2022

Appellant in person present. Mr. Kabeer
ullah Khattak, AAG alongwith Shahid Anwar,
ADEO (Litigation) for the respondents present.

Respondents have submitted written reply/
comments which is placed on file. To come up for
arguments on 07.09.2022 before D.B.



(Kalim Arshad Khan)
Chairman