

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 1073/2017

Date of Institution ... 26.09.2017

Date of Decision ... 06.03.2023

Dr. Muhammad Zia Khattak, S/O Azmat Khan. R/O Dak Ismail Khel,  
Nowshera, Ex-MO, KTH, Peshawar.

... (Appellant)

**VERSUS**

Secretary, Government of Khyber Pakhtunkhwa, Health Department  
Peshawar and 01 another.

... (Respondents)

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MR. ARBAB SAIF-UL-KAMAL,  
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General

--- For respondents.

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

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CHAIRMAN  
MEMBER (JUDICIAL)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Precisely stated the facts surrounding the instant service appeal are that the appellant was appointed as Medical Officer in Health Department and he assumed the charge of his post on 01.11.2000. Disciplinary action was initiated against the appellant on the allegations of his willful absence from duty with effect from 01.04.2013 and he was removed from duty vide impugned order dated 25.08.2014. The appellant allegedly challenged the same through filing of



departmental appeal on 23.09.2014, however the same was not responded, hence the instant service appeal 26.09.2017.

2. Respondents were summoned, who contested the appeal by way of filing comments, wherein they refuted the assertion raised by the appellant in his appeal.

3. Learned counsel for the appellant argued that due to some domestic issues, the appellant had applied for 730 days leave but outcome of the same was not communicated to him and the appellant was under the impression that his leave application was allowed. He further argued that neither any charge sheet nor statement of allegations was issued to the appellant and whole of the proceedings were conducted in violation of mandatory provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He further contended that no show-cause notice was ever served upon the appellant and whole of the proceedings were carried out at his back, without affording him any opportunity of self defence. He also argued that the appellant was having about 13 years service at his credit and the penalty of removal from service was too harsh. In the last he argued that the impugned order being wrong and illegal is liable to be set-aside and the appellant may be reinstated in service with all back benefits.

4. Conversely, learned Assistant Advocate General for the respondents contended that though the appellant had submitted an

application for 730 days leave, however the same was regretted on 17.04.2013 and in this respect appellant was also informed about the rejection of his leave application but he deliberately remained absent from duty. He next contended that the appellant was sent show-cause notices at his home address but he did not bother to respond to the said notice, therefore, show-cause notice was issued to him through publication in newspaper but even then the appellant did not respond. He further argued that the impugned order was passed on 25.08.2014, against which the appellant filed departmental appeal on 23.09.2014, however the same was not responded, therefore, the appellant was required to have filed service appeal within 30 days after expiry of statutory period of 90 days but the appellant filed the instant service appeal after considerable delay on 26.09.2017, which is badly time barred. In the last he requested that the impugned order may be kept intact and the appeal in hand may be dismissed.

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

6. A perusal of the record would show that the appellant was serving as Medical Officer in Health Department. He had applied for 730 days leave with effect from 01.03.2013, however the same was regretted on 17.04.2013. Disciplinary action was taken against the appellant on the allegations of his absence from duty with effect from 01.04.2013. The departmental action against the appellant culminated into his removal from service vide order

dated 25.08.2014. The same was challenged by the appellant through filing of departmental appeal on 23.09.2014, however the same was not responded within the statutory period. On expiry of the statutory period of 90 days, the appellant was required to have filed the service appeal within next 30 days, however he kept waiting and filed the instant service appeal on 26.09.2017 i.e after expiry of about 03 years. The service appeal filed by the appellant is thus badly time barred. The appellant was required to justify the delay of each day, however while going through the application filed by the appellant for condonation of delay, we have observed that the appellant has alleged therein that he was waiting for outcome of the departmental appeal and as the matter involved monetary benefits, therefore, no limitation would run against the same. The grounds so agitated by the appellant in his application for condonation of delay could not be considered as sufficient cause for condonation of delay. August Supreme Court of Pakistan in its judgment reported as 2011 SCMR 08 has held that question of limitation cannot be considered a technicality simpliciter as it has got its own significance and would have substantial bearing on merit of case.

7. It is well settled that law favours the diligent and not the indolent. As mentioned above, that the appellant remained indolent and did not agitate the matter before the Service Tribunal within the period prescribed under the relevant law. This Tribunal can discuss 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. In view of the above discussion, the appeal in hand stands dismissed being barred by time. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
06.03.2023



(KALIM ARSHAD KHAN)  
CHAIRMAN



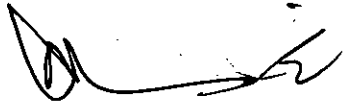
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

ORDER  
06.03.2023

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan. Páindakhel, 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 barred by time. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
06.03.2023



(Kalim Arshad Khan)  
Chairman



(Safah-Ud-Din)  
Member (Judicial)