

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 646/2018

Date of Institution ... 03.05.2018

Date of Decision ... 06.03.2023

Sabir Hussain (Ex-Head Constable Police Station Charsadda) S/O Fazal Elahi.
R/O-Cheena Tehsil Tangi Chardadda.

... (Appellant)

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa Peshawar and 02 others.

... (Respondents)

MR. TAIMUR ALI KHAN,
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 while posted at Police Station Charsadda, was proceeded against departmentally on the allegations of his absence from duty with effect from 15.07.2016. The departmental action against the appellant concluded into his dismissal from service vide impugned order bearing O.B No. 1584 dated 14.12.2016. The appellant challenged the order of his dismissal from service through filing of departmental appeal on 29.12.2017, however the same was rejected vide order dated 13.03.2018. The revision petition submitted by the appellant was also

filed vide order dated 03.04.2018 passed by the Inspector General of Police Khyber Pakhtunkhwa Peshawar. The appellant has now preferred the instant service appeal for redressal of his grievance.

2. On admission of the appeal for regular hearing, respondents were summoned, who appeared through their representative and contested the appeal by way of submitting joint para-wise comments, wherein they raised certain legal as well as factual objections.

3. Learned counsel for the appellant addressed arguments by supporting the ground raised by the appellant in his appeal and requested that the punishment awarded to the appellant is too harsh, therefore, the same may be converted into compulsory retirement in view of 22 years long service career of the appellant.

 4. On the other hand, learned Assistant Advocate General for the respondents controverted the arguments of learned counsel for the appellant and supported the stance raised by the respondents in their comments.

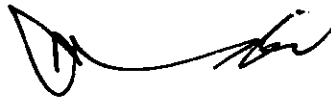
5. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.

6. The appellant was proceeded against on the allegation of absence from duty and he was dismissed from service vide order bearing O.B No. 1584 dated 14.12.2016. According to copy of departmental appeal, which is annexed with the comments so submitted by the respondents, the same was submitted on 21.02.2018, while the impugned order of dismissal from service of the appellant was passed

on 14.12.2016. The departmental appeal of the appellant was thus badly time barred, which fact has ever been admitted by the appellant in para-7 of his appeal. The appellant was dismissed from service vide impugned order bearing O.B No. 1584 dated 14.12.2016 and was required to have filed departmental appeal within next 30 days, however he filed departmental on 29.12.2017 after a lapse of more than one year, which was rejected vide order dated 13.03.2018 being time barred. It is well settled proposition of law that when an appeal of an employee was time barred before the appellate Authority, then the appeal before the Tribunal was not competent. Reliance in this respect is placed on 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 S.C 951.

7. Consequent upon the above discussion, the appeal in hand stands dismissed being not maintainable. 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

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Shah Jehan, S.I (Legal) 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 not maintainable. 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)