

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**AT CAMP COURT ABBOTTABAD**

**Service Appeal No. 1026/2014**

BEFORE: **MR. KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**MRS. RASHIDA BANO** ... **MEMBER(J)**

Pir Fazal-E-Hakim S/O Molvi Ghlam Rasool, Arabic Teacher, Government Middle School Mangrai Kamaisar District Torghar.

... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Secretary Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
4. Deputy Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
5. Executive District Officer (E&SE) District Torghar.
6. District Accounts Officer Torghar.

... (Respondents)

Mr. Hamayun Khan  
Advocate

... For Appellant

Mr. Asad Ali Khan  
Assistant Advocate General

... For Respondents

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Date of Institution.....11.07.2014  
Date of Hearing.....20.06.2023  
Date of Decision.....20.06.2023

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of the instant service appeal the impugned order dated 29.05.2013 against the appellant may graciously be set aside and he may kindly be restored from dismissal dated

18.09.2012 with all back benefits.”



2. Brief facts giving rise to the instant appeal are that appellant was appointed as Arabic Teacher (BPS-09) in GMS Chiniai Mansehra vide order dated 13.11.1994, thereafter, he was adjusted against newly oriented/sanctioned post at GMS Mangri Kamosar District Torghar on 23.05.1999. On the basis of absence respondents No. 5 issued show cause notice on 20.06.2012 followed order of removal from service of the appellant dated 18.09.2012. Feeling aggrieved the appellant filed departmental appeal on 17.10.2012, which was not responded, hence, the present service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued competent authority was not authorized and notified respondent No. 5 as inquiry officer, therefore, the impugned order is liable to set aside. He further argued that the appellant was condemned unheard which is violation of the principle of law "*audi alteram partem*" and also against the provision of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

5. Conversely, learned Assistant Advocate General argued that the appellant has been treated in accordance with law and rules and after fulfillment of all codal formalities major penalty of removal from service has been imposed upon him, as he willfully absented himself from duty without prior permission or leave sanctioned. He further argued that impugned order was passed on 18.09.2012 but he failed to file within time departmental appeal as well as service appeal before Service Tribunal within statutory period, therefore, he requested for dismissal of the instant service appeal.

6. Admittedly, the impugned order of removal from service of appellant was passed on 18.09.2012 against which departmental appeal was filed by the



appellant on 17.10.2012, as is evident from the copy annexed with the memo of appeal. The departmental appeal of the appellant is within time in light of the limitation provided under the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986. However, where a departmental appeal lies and so preferred, the limitation of thirty days for filing of appeal before the Tribunal, within meaning of the proviso (a) to section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, commences from elapsing of 90 days period from the date on which such appeal preferred; if not earlier decided. Appeal at hand was instituted on 11.07.2014 to this Tribunal, which should have been filed on or before 08.02.2013 but it was filed on 11.07.2014 with a considerable delay of one year and eight months. Although, the appellant had filed application for condonation of delay but reason mentioned in said application was not plausible because it is not appealable to a prudent mind that a person waited for more than one year and eight months time period upon the verbal assertions of the respondent who had already removed him from service. Therefore, application for condonation of delay is of no help to the appellant as he has failed to explain delay of each and everyday plausibly.

7. For what has been discussed above, the appeal in hand is hopelessly barred by time, hence, dismissed . Costs shall follow the event. Consign.

8. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 20<sup>th</sup> day of June, 2023.*



(RASHIDA BANO)  
Member (J)  
Camp Court, Abbottabad



(KALIM ARSHAD KHAN)  
Chairman  
Camp Court, Abbottabad