

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No. 341/2022

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

Mohammad Noor S/O Moulvi Mehmood R/O Village Maidan Sharyal, Tehsil Palas
District Kolai Palas Kohistan, Presently SPST. Government Primary School Najam
Kot Palas, Kohistan. ... (Appellant)

VERSUS

1. Secretary Elementary & Secondary Education Department. Government of Khyber Pakhtunkhwa, Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) District Kolai Palas Kohistan.
4. Sub-Divisional District Education Officer (Male) District Kolai Palas Kohistan. ... (Respondents)

Mr. Mohammad Riaz
Advocate ... For Appellant

Mr. Asad Ali Khan
Assistant Advocate General ... For Respondents

Date of Institution.....08.03.2022
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 respondents may kindly be directed to consider the appellant as trained PST from his 1st appointment i.e 12.08.1992.”

2. Brief facts giving rise to the instant appeal are that appellant was appointed as untrained Primary School Teacher (PST) vide order dated



12.08.1992 in District Kohistan. During service the appellant completed his required training in the year 2013. The Government of Khyber Pakhtunkhwa, Finance Department (Regulation Wing) issued a letter No. FD(PRC)502/2002 dated 31.10.2009, through which all untrained teachers, who had completed their training were allowed to draw annual increment from the date of their first appointment. The appellant had applied to the respondents for the arrears of his such annual increment and determination of his seniority from the date of his first appointment, that the respondents granted annual increment to the appellant but seniority had not been determined from the date of his first appointment. He filed departmental appeal on 20.04.2019 which was not responded, hence, the instant 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 that act of the respondents for not considering and determining the seniority of the appellant from the date of his first appointment is against the law and facts, hence, not tenable in the eyes of law.

5. Conversely, learned Assistant Advocate General argued that the appellant was appointed as untrained PST in the year 1992, thereafter he acquired training of PST certificate in 2013, As per APT Rules seniority shall be reckoned from the date of regular appointment i.e 2013 in case of the appellant, therefore, appellant is not entitled for such relief, he requested for the dismissal of the instant service appeal.

6. Record reveals that appellant filed instant appeal with a request for determination his seniority from the date of his first appointment i.e 12.08.1992 the date on which he was appointed as untrained PST on fixed pay. Appellant later on, in the year 2013 completed his required training. The Government of Khyber Pakhtunkhwa, Finance Department (Regulation Wing) issued a letter No. FD(PRC)502/2002 dated 31.10.2009, in accordance with which all the untrained teachers, who had completed/passed their training were allowed to draw annual increments from the date of their first appointment and for which appellant had applied and the same was accordingly allowed by the respondents to him. Appellant filed an application on 20.04.2019 to respondent No.3 for determination of his seniority from the date of his first appointment i.e 12.08.1992, which was not responded till date. Appellant also contended that, although, he was allowed increment for his untrained service period but his respective seniority was determined from the date of acquiring the training/prescribed qualification and not from the respective date of his first appointment. Admittedly, the appellant's service was regularized in the year 2013 and he filed departmental representation for determination of his seniority on 20.04.2019, which he had to file within 30 days under Rule-3 of Khyber Pakhtunkhwa Civil Savants (Appeal) Rules, 1986, because it says that a civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms & conditions of his service may file departmental appeal within 30 days but the appellant filed departmental appeal with a considerable and unexplained delay of almost 5 years. It is well entrenched legal proposition that where appeal before departmental authority is time barred, the appeal before service Tribunal would be incompetent. In this regard reference be made to case titled Anwarul Haq Vs. Federation of



Pakistan 1995 SCMR, 1505, Chairman, PIAC v. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others 2004 SCMR 1426.

7. Not only the departmental appeal was barred by time but admittedly the appeal in hand was also filed by the appellant on 08.03.2022 after considerable delay of 2 years, 10 months and 12 days, which he was to file within 120 days from the date of filing of departmental representation in a situation when departmental representation is not decided by the competent authority. Therefore, appeal of the appellant is barred by time.

8. As sequel to above discussion, the appeal in hand is dismissed. Costs shall follow the event. Consign.

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



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



(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottabad