

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT D.I.KHAN

Service Appeal No. 642/2022

Date of Institution ... 27.04.2022

Date of Decision... 17.07.2023

Muhammad Himayatullah Qureshi S/O Dr. Hameedullah Qureshi, R/O Haider Khan Advocate near Tang Bazar P.O & District Tank, Ex-Assistant to Commissioner Office Dera Ismail Khan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Establishment Department Khyber Pakhtunkhwa Peshawar and 02 others.

... (Respondents)

MR. MUHAMMAD WAQAR ALAM
Advocate

--- For appellant.

MR. FARHAJ SIKANDAR,
District Attorney

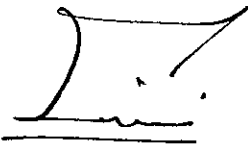
--- For respondents.

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

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts as alleged by the appellant in his appeal are that he was inducted as Assistant to Commissioner (BPS-17) in Dera Ismail Khan. During the course of his service, the appellant met major accident, therefore, he submitted an application to Commissioner Dera Ismail Khan for his retirement on the basis of medical ground. The application of the appellant was forwarded to the quarter concerned for constituting Standing Medical Board and vide letter No. 3861 dated 10.10.2018 the appellant was called upon to appear before the Standing Medical Board/Standing Invaliding Committee. Due to delay on




part of the respondents, the case of the appellant could not be materialized well in time and in the meantime, the appellant was retired from service vide Notification dated 02.11.2018 on attaining the age of superannuation, therefore, he made a representation to Secretary Establishment Peshawar on 20.12.2019 regarding his retirement on medical grounds, which was not decided. The appellant has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to full hearing, respondents were summoned but they failed to submit reply/comments, therefore, vide order dated 19.01.2023 they were placed ex-parte and their right to file reply was struck off.

3. Learned counsel for the appellant has argued that during service, the appellant met an accident and was hospitalized, therefore, he submitted application to the competent Authority for his retirement on medical ground. He next contended that the application of the appellant for his retirement on medical ground was duly processed and in this respect Standing Medical Board was constituted, which has categorically declared the appellant as permanently incapacitated on 10.10.2018. He further argued that despite clear findings of the Standing Medical Board, the appellant was not retired on medical ground but was wrongly and illegal retired from service on attaining the age of superannuation vide Notification dated 02.11.2018, therefore, the same may be set-aside and appellant may be declared as retired on medical ground. He further argued that this Tribunal has already granted relief in

Service Appeal No. 921/2021 decided on 09.11.2021, therefore, the appellant may also be granted the same relief being identical.

4. On the other hand, learned District Attorney for the respondents has argued that on reaching the verge of retirement the appellant submitted an application seeking invalid retirement on medical ground for the sole purpose that his son could become entitle to be recruited in his place. He next argued that the appellant somehow maneuvered to get a favourable opinion of the Standing Medical Board, however before further processing of his case, the appellant reached the age of superannuation and was thus retired. In the last he argued that the departmental appeal of the appellant was barred by time for more than one year, while his service appeal is barred by time for more than two years, therefore, on his score alone, the appeal in hand is liable to be dismissed.

 5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

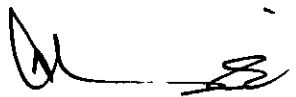
6. A perusal of the record would show that the appellant was retired from service vide Notification dated 02.11.2018 on attaining the age of superannuation. The appellant was required to have filed departmental appeal within next 30 days after passing of impugned Notification dated 02.11.2018, however he filed representation to Secretary Establishment Khyber Pakhtunkhwa Peshawar on 20.12.2019 i.e after a delay of more than one year. The departmental appeal of the appellant was thus badly time barred. The appellant in

his application for condonation of delay has though taken the plea that as per Section-30 of Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation remained frozen. The said plea of the appellant holds no force for the reason that the Government of Khyber Pakhtunkhwa had declared Public Health Emergency for the first time in March, 2020, while the departmental appeal of the appellant became barred by time prior to March, 2020. It is 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 PLD 1990 S.C 951, 2006 SCMR 453 and 2007 SCMR 513. August Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on limitation, its merits need not to be discussed.

8. Consequently, it is held that as the departmental appeal of the appellant was badly time barred, therefore, the appeal in hand being not competent is hereby, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

17.07.2023



(KALIM ARSHAD KHAN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN