

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 03/2018

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER (E)

Habibur Rehman son of Mian Abdul Karim, Ex-Prosecuting Sub Inspector presently residing in House No. 523, Street No. 15, Sector E/3, Phase-I, Hayatabad, Peshawar. (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
2. Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. Additional I.G (Investigation), Khyber Pakhtunkhwa, Peshawar. (*Respondents*)

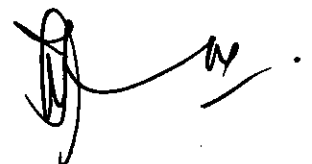
Appellant	...	In person
Mr. Muhammad Jan District Attorney	...	For respondents

Date of Institution.....	18.12.2017
Date of Hearing.....	13.07.2023
Date of Decision.....	13.07.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of pension for 11 years, 10 months and 7 days service rendered by the appellant as Prosecuting Sub Inspector from the date of joining service i.e. 8th March 1967 till the date of his discharge from service on tendering resignation i.e 15th January, 1979 with full back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed on 08.03.1967 as a Prosecuting Sub Inspector in the Police Force and after his appointment he was deputed to undergo the



prescribed training at Sehala (Rawalpindi) i.e the Police Training College where on completion of his 6 months training period returned to District Kachhi (a District of Balochistan), which was the district of his initial recruitment, where he served for more than 3 years. In the year 1971, the appellant got transferred from the Province of Balochistan to the Province of N.W.F.P (Khyber Pakhtunkhwa). When he reported for duty, he was posted to District Mardan from where he was deputed to Swabi Sub-Division, from where, after completing his period of tenure, he was transferred to Peshawar and was posted to Charsadda, where he worked in the Sub-Divisional Courts for more than 03 years. After that he was further transferred to the Martial Law Courts where he served for more than 8/9 months. Thereafter he was transferred to the Police Training College Hangu, where he taught Law faculties to the PSI Class and various other trainee classes for a period of 03 months after which he was posted to the Crimes Branch Peshawar. Due to his domestic problems, he was unable to perform his official duties and tendered his resignation, which was accepted and he was issued Discharge Certificate by the Crimes Branch, Peshawar on 15.01.1979. The appellant filed a departmental appeal on 06.10.2017 to the Inspector General of Police to grant him his pension for the period which he had rendered in the Police Force but it was regretted on 17.11.2017; hence the present appeal.

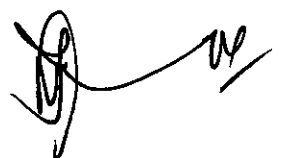
3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.



4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant had served in various capacities which included prosecution in Sub-Divisional Courts, Martial Law Courts and teaching various faculties in Police Training College Hangu and thus served for more than 11 years 10 months and 7 days as a civil servant. When he realized that he could not discharge his official duties in the department, he tendered his resignation to the authority which was accepted. He applied to the NWFP Bar Council to enroll him as Member of the Bar, hence was issued a certificate authorizing him to appear and plead as an Advocate in the Courts of NWFP. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney at the very outset contended that the appeal was time-barred. While rebutting the arguments of learned counsel for the appellant, he argued that no record pertaining to appointment of the appellant as Prosecuting Sub-Inspector in Police Force and his subsequent transfer to the Province of Khyber Pakhtunkhwa was available on record. He referred to Pension Rule 2.11 and requested that the appeal might be dismissed.

6. After hearing the arguments from both sides and going through the record presented before us, it transpires that the appellant, on acceptance of his resignation on 15.01.1979, did not agitate the matter of payment of pension. It was after long 38 years that he submitted a departmental appeal for the said payment in 2017, which was responded in the light of Khyber Pakhtunkhwa Civil Servants Pension Rules. It has been observed that the appellant failed to take up his case of pension payment at the time he was relieved from service. The law of limitation applies on this case and the honourable Supreme Court of



Pakistan in case reported as 2023 SCMR 291 titled “Chief Engineer Gujranwala Electric Power Company (GEPCO) Gujranwala Vs. Khalid Mehmood and others” has elaborately expressed its view in this respect. The honorable court was pleased to find that the law of limitation reduces an effect of extinguishment of a right of a party when sufficient lapses occur and when no sufficient cause of such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. According to them, the intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after specified period, authorizing a litigant to enforce his existing right within the period of limitation.

7. In the instant case, it has been noted that the appellant slept over his right to take up the matter at an appropriate time within the stipulated period. Instead of pursuing the matter at the time of his discharge from service, he preferred to choose his own time, according to his own wish and desire.

8. In the light of above discussion, the instant service appeal is groundless and is dismissed with cost. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of July, 2023.*


(FAREEHA PAUL)
Member (I)

Fazle Subhan, P.S


(KALIM ARSHAD KHAN)
Chairman