

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN  
FAREEHA PAUL ... MEMBER (Executive)**

*Service Appeal No.1675/2021*

Date of presentation of Appeal.....27.01.2021  
Date of Hearing.....26.07.2023  
Date of Decision.....26.07.2023

**Asif Khan S/O Nadir Khan R/O Moh: Barkatullah, Kohat City  
District Kohat.....Appellant**

Versus

1. Registrar Peshawar High Court, Peshawar.
2. District & Session Judge, Kohat. (deleted vide order sheet dated 26.07.2023)
3. Special Judge Anti terrorism Court, Kohat.
4. Senior Civil Judge, Kohat (deleted vide order sheet dated 26.07.2023).....(Respondents)

Present:

Syeda Ume Habiba, Advocate.....For the appellant

Mr. Mohammad Jan,  
District Attorney.....For official respondents.

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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST THE IMPUGNED OFFICE ORDER NO. 36-  
40/ATC-K DATED 22.01.2013 OF JUDGE ANTI  
TERRORISM KOHAT DIVISION, KOHAT, WHEREBY  
THE APPELLANT WAS REMOVED FROM SERVICE  
AND AGAINST THE IMPUGNED OFFICE ORDER NO.  
28 ATC-KT DATED 20.01.2020 OF THE OFFICE OF  
JUDGE ATC, KOHAT WHEREBY THE  
DEPARTMENTAL APPEAL OF THE APPELLANT WAS  
TURNED DOWN IN A CLASSICAL, CURSORY AND  
WHIMSICAL MANNER.**

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## JUDGMENT

**KALIM ARSHAD KHAN CHAIRMAN:** Facts of the case as described in the memo of appeal are that the appellant was appointed as Senior Scale Stenographer; that he was charged in a false and fabricated criminal case vide FIR No. 658 dated 22.09.2012 U/S 302/324/34 PPC/7ATA, Police Station Cantt Kohat; that he was absconded due to the said FIR; that he was removed from service vide order dated 22.01.2013 due to absence from duty w.e.f 22.09.2012 as well as alleged involvement in a criminal case; that he was later on acquitted by the Hon'ble Judge Model Court-II, Kohat; that thereafter, he moved an application to the worthy Registrar Peshawar High Court, Peshawar but the same was returned vide office order dated 19.12.2020 with the observation to approach the competent authority; that as per direction of the worthy Registrar Peshawar High Court, Peshawar, he moved a departmental appeal for his reinstatement into service to respondent No. 3, which was turned down vide order dated 20.01.2021, hence, the present service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellants and learned District Attorney for respondents.

04. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney for the respondents controverted the same by supporting the impugned order(s).

05. Following the procedure under Rule-9 of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011; the appellant was removed from service vide the impugned order dated 22.01.2013. It appears from the available record that the appellant absconded in a criminal case and was later on declared as a proclaimed offender by the criminal court. He has placed on file an order of acquittal passed by learned Additional Sessions Judge-II/MCTC, Kohat on 26.11.2020. It appears from the order of learned Addl: Sessions Judge that the appellant, after his surrendering before the Law, was released on bail and was on bail when he was acquitted on 26.11.2020. The appellant filed application to the worthy Registrar Peshawar High Court, Peshawar for his reinstatement on 07.11.2020 i.e. after more than eight years of his removal from service. It appears that the appellant had filed an application for reinstatement and not the departmental appeal. The said application was responded with letter No. 22433/Admin dated 19.02.2020 with the advice to the appellant to approach the Appointing Authority for the purpose. The application was not treated as appeal by the worthy Registrar. The appellant then submitted an application on 22.12.2020 to the learned Judge, ATC, Kohat which was filed on 20.01.2021. The departmental appeal was not filed thereafter. Admittedly, the appellant was removed from service in the year 2013 and he filed an



application for reinstatement into service on 22.12.2020. The appellant was removed from service on 22.01.2013 and he ought to have filed departmental appeal within 30 days of the communication of the removal order to him but he did not file that within 30 days under Rule-3 of Khyber Pakhtunkhwa Civil Servants (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. 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 Anwar ul 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. Therefore, appeal of the appellant is barred by time and is dismissed. Costs shall follow the event. Consign.

*06. Pronounced in open Court at Peshawar and given under our hands  
and the seal of the Tribunal on this 26<sup>th</sup> day of July, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)