

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2228/2021

BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)  
MRS. RASHIDA BANO ... MEMBER (Judicial)

Muhammad Usman S/O Haji Shah Wzir Ex: PET, R/O Bangash  
Marrukhel & P/O Bagan Kuram Agency, District Hangu.  
.... (Appellant)

Versus

1. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. Director of Education, Merged areas Secretariat, Warsak Road, Peshawar.
3. District Education Officer, District Kurram.  
.... (Respondents)

Mr. Muhammad Kamran  
Advocate ... For appellant

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

-----  
Date of Institution.....27.01.2021  
Date of Hearing.....13.07.2023  
Date of Decision.....13.07.2023

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:

“That on acceptance of this service appeal the impugned order dated 11.12.2015 may kindly be set



**aside and the appellant may be reinstated into service with all back benefits”.**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Physical Education Teacher (PET) in Government Middle School Arawali Kuram Agency vide order dated 18.01.2013. He submitted his charge report on 19.01.2013 and took charge of the post as PET. Additional Education Officer terminated the appellant alongwith other colleagues from service vide order dated 11.12.2015. That some of the colleagues of the appellant filed service appeal No. 298/2016 before this Tribunal, wherein his service appeal was accepted vide order dated 31.05.2018, by issuing direction to the respondent to adjust/reinstate the appellants at the post of C.T with immediate effect. The appellant having requisite qualification was ignored. Feeling aggrieved from the impugned order dated 11.12.2015 preferred departmental appeal before the appellant authority on 14.10.2020, which was not responded to, 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 submitted that the impugned order is against law, facts, norms of natural justice hence liable to be set aside. He argued that the appellant has not been treated in accordance with law and rules and the respondent violated Article 4 and 25 of the Constitution of

Islamic Republic of Pakistan, 1973. He contended that the appellant was discriminated by adjusting/reinstating other colleagues of appellant which is against the norms of natural justice.

5. Conversely, learned Assistant Advocate General contended that after recruitment process, complaint was lodged against the recruitment process. In this regard, an oversight committee was constituted and as per recommendation of oversight committee, the appellant is not entitled for any relief because he was lack of professional qualification at the time of recruitment after recruitment process. The appellant had not acquired Diploma in Physical Education, therefore, his appointment order was withdrawn.

6. Case of the appellant is that, he was wrongly terminated from service despite being possessing requisite qualification without affording him opportunity of self defense and by conducting regular inquiry in accordance with rules and law. Appellant contended that the respondent circulated an advertisement for various posts as a result of which appellant applied for the post of PET. He was appointed as PET after fulfillment of all codal formalities vide notification dated 18.01.2013 who after being declared medically fit took charge of his post as PET Male in GMS Arawali Kuram Agency. Respondent had also prepared service book of the appellant wherein entries have been made, but all of a sudden, Additional Education Officer, Lower & Central Kurram Agency issued termination order on 11.12.2015 of the appellant without any justification.

7. Appellant contended that appeals of other officials and teachers, who were terminated vide impugned order dated 11.12.2015 were decided by



this Tribunal and on basis of rule of consistency appellant is also entitled to the said relief by ignoring technicalities. Admittedly in accordance with publication annexed with the appeal qualification for PET PBS-9 was BA/BSc or equivalent degree from any recognized university alongwith one year certificate/Diploma in Physical Education. Appellant had passed diploma in Physical Education on 29.09.2014, while appellant was appointed vide order dated 18.01.2013. Which means that at the time of appointment in the year 2013, appellant had not possessed the required qualification of one year Certificate/Diploma in Physical Education which was pre-requisite for appointment as PET. Perusal of both the judgments on the basis of which appellant claim rule of consistency reveals that position and cases of appellant in appeals No. 296/2016 and 298/2016 are on different footing because in the case of Wahid Zaman, all the appellants possessed requisite qualification and their appointment to post of CT were found to in excess to Sub-Divisional Quota and one of the appellant is domicile holder of Upper Kuram. While in other appeal of Shakhi Akbar his typing speed was not upto the advertised one. Appellant was terminated due to not possessing requisite professional qualification i.e Diploma in Physical Education. The case of the appellant is not thus at par with those appellants who granted relief by the Tribunal.

8. Otherwise too, impugned order was issued on 11.12.2015 vide which service of the appellant alongwith other colleagues had been terminated. Appellant had to challenged impugned order within 30 days of its issuance i.e 11.12.2015 in accordance with Rule-3 of Khyber Pakhtunkhwa Civil Servant Appeals Rules, 1986, which 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 of passing such order. But appellant filed his departmental representation on 14.10.2020, after lapse and considerable delay of four years and two months and three days of passing of impugned order. Appellant preferred appeal to this Tribunal on 27.01.2021, which was though within time form the date of filing of departmental appeal which itself was filed with considerable and unexplained delay of four years and two months and three days rendering this service appeal as incompetent. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

9. For what has been discussed above, the appeal of the appellant is barred by time, hence dismissed. Costs shall follow the event. Consign.

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



**(SALAH UD DIN)**

Member (J)



**(RASHIDA BANO)**

Member (J)