

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1374/2017

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Faheem, Sub-Inspector, Incharge S.I Finger Print Bureau (FPB), Forensic Science Laboratory Investigation, Khyber Pakhtunkhwa, Hayatabad, Peshawar. (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector of Police, Headquarter, Khyber Pakhtunkhwa, Police Lines, Peshawar.
3. Additional Inspector of Police, Investigation, Khyber Pakhtunkhwa, Police Lines, Peshawar.
4. Director Forensic Science Laboratory, Investigation, Khyber Pakhtunkhwa. Peshawar.
5. Safdar Ali Shah, Sub-Inspector Finger Print Bureau (FPB), Forensic Science Laboratory, Investigation, Khyber Pakhtunkhwa, Hayatabad, Peshawar.

.... (Respondents)

Mr. Tariq Aziz Khan
Advocate

... For appellant

Mr. Nasir Mehmood
Advocate

... For private respondent

Mr. Muhammad Jan
District Attorney

... For official respondents

Date of Institution.....29.11.2017

Date of Hearing.....18.07.2023

Date of Decision.....18.07.2023

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:

“On acceptance of this appeal, the respondents may be directed to rectify the discrepancy in the seniority list by



illegally keeping and illogically placing the name of the appellant below the name of the respondent No. 5 and they further be directed to keep/maintain the old seniority list already maintained right from the year 1991 till 2009 and the legitimate valuable right of the appellant be restored.”

2. Brief facts of the case, as given in the memorandum of appeal, that appellant was enlisted in Police Department for Crime Laboratory as Constable on 20.10.1982 in District Mardan while respondent No. 5 was enlisted as Constable in Finger Print Bureau on 02.11.1998 and such appellant was kept and shown senior than respondent No. 5 till 2009. Respondent No. 5 was promoted as Head Constable on 01.01.1989 prior to the confirmation as Constable dated 02.11.1991 which is illegal. Appellant being enlisted as Constable dated 20.10.1982 and confirmed dated 21.10.1985 is senior than respondent No. 5. Respondent No. 5 filed departmental representation for claiming seniority and promotion before the Deputy Inspector General of Police Crime Branch Peshawar which was rejected. Once again on 29.01.2009 respondent No. 5 re-filed his representation before the competent authority which was accepted and vide order dated 17.04.2009 wherein appellant came at serial No. 14 and respondent No. 5 at serial No. 11. The appellant was unaware regarding the impugned order which was passed on 17.04.2009 and no copy was delivered/endorsed to him. Feeling aggrieved, he filed departmental appeal on 05.05.2016 before respondent No. 1, which was filed on 01.12.2016.

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.

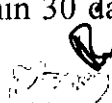
4. Learned counsel for the appellant argued that the appellant had not been treated in accordance with law and rules. He contended that the impugned order passed by the respondent is illegal, unlawful and against the on the subject and against the norms of natural justice hence, liable to be set aside. He further contended that non-correction of wrong entry by placing the name of the appellant below the name of respondent No. 5 in the seniority list of S.I is illegal, unlawful and unconstitutional as appellant was appointed on 20.10.1982 while respondent No. 5 on 02.11.1988. He, therefore requested for acceptance of instant service appeal.

5. The learned Assistant Advocate General contended that the appellant had been treated in accordance with law and rules. He further contended that respondent No. 5 was directly recruited in Finger Print Bureau on 02.11.1988 while, appellant was transferred from District Mardan in 1986 but he did not join FPB till 1991, therefore, private respondent No. 5 was senior to him. He further submitted that promotion in Finger Print Bureau is subject to qualifying basic technical courses i.e Proficient and Searcher course. Private respondent No. 5 qualified these courses in the year 1988 and 1990 while the appellant qualified the same in the year 1989 and 1992, therefore, he was promoted to the rank of Head Constable prior to appellant. Lastly, he submitted that the departmental appeal as well as service appeal of the appellant is barred by time, therefore, he requested for dismissal of the instant service appeal

6. Perusal of record reveals that appellant challenged order dated 17.04.2009 passed by respondent No. 3 vide which representation of private respondent No. 5



was accepted and he was declared senior to the appellant and was placed at serial No. 11 instead of Serial No. 14 above the name of appellant and below the name of Muhammad Abbass of the seniority list of Staff of FSL issued on 26.01.2009. Appellant challenged order dated 17.04.2009 in departmental appeal on 05.05.2016 which was denied by the authority on 01.12.2016 being barred by law of limitation after providing opportunity of personal hearing to appellant as well as to respondent No. 5. Appellant contended that he was unaware of order dated 17.04.2009.

7. Lets, for the sake of arguments, presume that appellant was unaware of the said order but he filed his departmental appeal on 05.05.2016. Then in accordance with law he will have to file his service appeal within 120 days of filing of departmental appeal/representation if not decided within 90 days of its filing appeal which he had not filed and wait for its decision. Authority decided his representation on 01.12.2016 then he had to approach this Tribunal within 30 days but he filed instant appeal on 29.11.2017 which is filed after considerable delay of almost one year of passing of order of the appellate authority. Appellant kept mum for long and considerable period of seven years and 18 days instead of filing the case within 30 days of passing of order from which he was aggrieved. Therefore, authority  dismissed his departmental appeal being barred by limitation. Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1973 says that "Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of terms of conditions of his service may, within thirty days of the communication of such order to him prefer an appeal of the Tribunal having jurisdiction in the matter." 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.

8. Although appellant filed said departmental appeal on 05.05.2016 wherein two references to his applications dated 05.05.2016 and its decision on 01.12.2016 as given at para 11 of the same have been made, which too was turned down. There is no provision of second departmental appeal, therefore, filing of said appeal is of no help to the appellant for condonation of delay that occurred in filing of service appeal.

9. For what has been discussed above, both the departmental appeal as well as service appeal 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 18th day of July, 2023.*


(FAREEHA PAUL)
Member (E)

*Kaleemullah


(RASHIDA BANO)
Member (J)