

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 799/2022

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Imran S/O Malook (HC No. 203 District Police Mardan), Village  
Lund Khwar District Mardan. .... (Appellant)

Versus

1. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. The Secretary, Home Department, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer Mardan.
4. District Police Officer Mardan. .... (Respondents)


Mr. Muhammad Irshad,  
Advocate ... For appellant

Mr. Assad Ali Khan,  
Assistant Advocate General ... For respondents

Date of Institution..... 31.03.2022  
Date of Hearing..... 08.09.2023  
Date of Decision..... 08.09.2023

**JUDGEMENT**

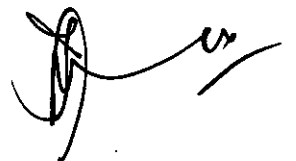
**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order of the DPO/respondent No. 4, dated 21.07.2017 whereby the appellant's approved five years service was forfeited and his appeal was dismissed by the respondent No. 3 without waiting for the result of the case, as the appellant has been acquitted by the court in FIR No. 452 dated 02.05.2017 u/s 411 PPC PS Sher Garh. It has been prayed that on acceptance of the appeal, the appellant might be restored to the position of 21.07.2017 and seniority might be ordered in accordance with merit as he had undergone lower training.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was posted as HC in District Police Mardan. He was malafidely charged in FIR under Section 411 PPC and was suspended. Respondent No. 4, vide order dated 21.07.2017, forfeited 5 years approved service of the appellant and also transferred him to Charsadda. Feeling aggrieved, he moved application before the Regional Police Officer which was rejected on 27.04.2018. He then filed revision petition before the Inspector General of Police on 04.03.2022, which was rejected on 16.03.2022, hence the present appeal.

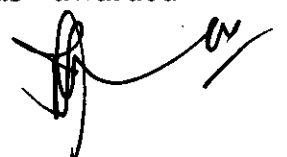
3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order was illegal, unjustified and against the principles of natural justice. He further argued that the respondents had no authority to forfeit five years approved service of the appellant while adjudication of the criminal case was pending before the competent court of law, hence, the respondents had acted beyond their authority. He further argued that the appellant was not provided the right of defence and was condemned unheard and the whole proceedings were carried out in utter disregard of the relevant rules. He requested that the appeal might be accepted as prayed.



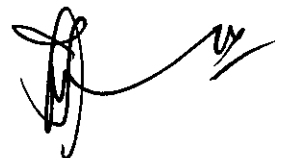
5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was involved in a criminal case vide FIR No. 452 dated 02.05.2017 u/s 411 PPC PS Shergarh. He informed that the appellant was issued charge sheet alongwith statement of allegations and enquiry was entrusted to the SDPO Takht Bhai Mardan. The enquiry officer during the course of enquiry fulfilled all legal and codal formalities by extending right of self defence to the appellant to produce evidence/grounds in his defense but in vain. The learned AAG further contended that the enquiry officer, after fulfilling necessary process, submitted his finding report to the competent authority and recommended the appellant for forfeiture of his five years qualified service. He was summoned and heard in orderly room on 19.07.2017 and was provided the right of self defence but he failed to produce any cogent justification. The learned AAG further argued that upon preferring departmental appeal, he was again called in the Orderly Room on 25.04.2018 but he again failed to produce any justification in his defence. He requested that the appeal might be dismissed.

6. Arguments and record provided before us shows that the appellant, while serving as Head Constable at P.S Takht Bhai, was involved in FIR No. 452 dated 02.05.2017 u/s 411 PPC P.S Shergarh. When the matter came to the knowledge of his high ups, they placed him under suspension and closed to Police Lines vide an order dated 08.05.2017. Disciplinary proceedings were also initiated against him by issuing a charge sheet and statement of allegations on 11.05.2017. The Inquiry Officer submitted his report on 12.06.2017, based on which the appellant was awarded



punishment of forfeiture of his five years' approved service vide order dated 21.07.2017 by the DPO Mardan, that has now been impugned before us. Aggrieved from the order, the appellant preferred a departmental appeal which was rejected by the Regional Police Officer, Mardan on 27.04.2018. Criminal case of the appellant was in progress in the relevant court of law and he was on bail. Vide an order of the learned Judicial Magistrate, Takht Bhai, Mardan dated 09.03.2020, the appellant was acquitted from the charges leveled against him. After his acquittal, he preferred a revision petition on 04.03.2022, which was filed by the competent authority on 16.03.2022 on the ground of being "badly time bared."

7. The above mentioned facts presented before us show that the departmental appeal of the appellant was rejected vide order dated 27.04.2018 and under Rule 11-A of Police Rules 1975, he was bound to prefer a revision petition within thirty days of the rejection order to the next higher authority i.e. the Inspector General of Police/Provincial Police Officer. Instead of that, he submitted the revision petition on 04.03.2022. If we assume, for the sake of argument, that he was waiting for his case to be decided by the court of law, even then it is evident from the record that the learned Judicial Magistrate acquitted him through his judgment dated 09.03.2020. When confronted why he did not prefer a revision petition immediately after acquittal and that why he waited for two years for submitting the same to the competent authority, the learned counsel for the appellant could not put forward any plausible reason for the delay.




8. In view of the above discussion, we do not find any hesitation in saying that when an appeal or petition is time barred before the departmental authority, then appeal before this Tribunal is not maintainable. The service appeal in hand is, therefore, dismissed, being not maintainable. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 08<sup>th</sup> of September, 2023.*

  
(FAREEHA PAUL)  
Member (E)

*\*Fazle Subhan, P.S\**


  
(SALAH-UD-DIN)  
Member (J)

S.A 799/2022


08<sup>h</sup> Sept. 2023 01. Mr. Muhammad Irshad Advocate for the appellant present.  
Mr. Asad Ali Khan, Assistant Advocate General for the respondents  
present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, we do  
not find any hesitation in saying that when an appeal or petition is  
time barred before the departmental authority, then appeal before  
this Tribunal is not maintainable. The service appeal in hand is,  
therefore, dismissed, being not maintainable. Costs shall follow  
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(FAREEHA PAUL)  
Member (E)

\*Fazle Subhan, P.S\*

  
(SALAH-UD-DIN)  
Member (J)