

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 7675/2021

Date of Institution ... 29.09.2021

Date of Decision... 19.09.2023.

Irfan S/O Nasar Ullah Khan, Constable Belt No. 670, District Police Kohat.

... (Appellant)

**VERSUS**

The Regional Police Officer, Kohat Region, Kohat and 01 other.

... (Respondents)

MR. ASHRAF ALI KHATTAK,  
Advocate

--- For appellant.

MR. MUHAMMAD JAN,  
District Attorney

--- For respondents.

SALAH-UD-DIN  
FAREEHA PAUL

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)

**JUDGMENT:**


SALAH-UD-DIN, MEMBER:- Short facts giving rise to filing of the instant appeal are that disciplinary action was taken against the appellant on the allegations that he was involved in smuggling of NCP Vehicles and had provided all possible assistance to them for personal gain. On conclusion of the inquiry, he was awarded major punishment of reduction in pay scale from higher stage to lower stage vide order bearing OB No. 542 dated 29.07.2020. He preferred an appeal to the Regional Police Officer Kohat Region, which was not



responded. The appellant then approached this Tribunal by way of filing the appeal in hand for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.



4. We have heard the arguments of learned counsel for the parties and have perused the record.

5. While going through the allegations leveled against the appellant in charge sheet as well as statement of allegations, it can be observed that the same are vague in nature as no specific particulars of involvement of the appellant in smuggling of NCP vehicles or providing assistance to smugglers of NCP vehicles have been mentioned therein. Even the name of any NCP smuggler assisted by the appellant in smuggling of NCP vehicles has not been mentioned in the charge sheet or

statement of allegations. While going through the findings of the inquiry officer, it can be observed that he has mainly relied on CDR and has mentioned certain cell numbers which were allegedly in use of smugglers of NCP vehicles. The available record does not show that the appellant was confronted with the CDR. Only one official namely Qamar Abbas was examined by the inquiry officer as witness during the inquiry, however the appellant was not provided any opportunity to cross-examine him. The aforementioned official has categorically mentioned in his statement that he had contacted certain smugglers of NCP vehicles, who were having telephonic contacts with the appellant. It is, however astonishing that he did not disclose the names and other particulars of those smugglers of NCP vehicles. In absence of any proof that the numbers mentioned in the CDR were being used by smugglers of NCP vehicles, the inquiry officer was not justified in placing reliance on the evidence in the shape of CDR.

6. In wake of COVID-19, the Government of Khyber Pakhtunkhwa declared Public Health Emergency for the first time in March, 2020 for three months which was extended from time to time for further term. The case of the appellant falls within the period of emergency. In view of Section-30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation period provided under any law was to


remain frozen. The appellant had filed departmental appeal on 27.08.2020, which remained un-responded, therefore, he was required to have waited for 90 days and to have filed service appeal within the next 30 days of the expiry of the said period of 90 days. The appellant, however filed the instant appeal on 27.10.2021, which was beyond the period of limitation, however in view of Section-30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the appeal in hand is not hit by bar of limitation.


7. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs.

File be consigned to the record room.

ANNOUNCED

19.09.2023

  
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)

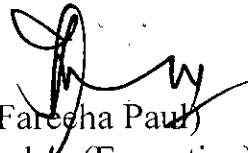
  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

ORDER  
19.09.2023

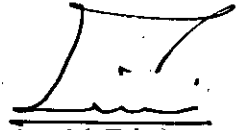
Appellant alongwith his counsel present. Mr. Arif Saleem, Steno alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
19.09.2023



(Fareeha Paul)  
Member (Executive)



(Salah-Ud-Din)  
Member (Judicial)