

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 663/2022

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

Mr. Manzoor Khan son of Alamzeb Ex-Constable No. 4754/EF, Police Department, Mardan. (Appellant)

Versus

1. The Secretary, Home Department, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Commandant Elite Force Khyber Pakhtunkhwa, Peshawar. (Respondents)

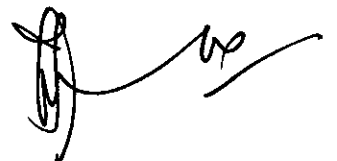
Mr. Shuaib Sultan,
Advocate ... For appellant

Mr. Muhammad Jan,
District Attorney ... For respondents

Date of Institution..... 29.04.2022
Date of Hearing..... 19.09.2023
Date of Decision..... 19.09.2023

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 Deputy Commandant Elite Force Khyber Pakhtunkhwa (respondent No.3) whereby the appellant was dismissed from service and against the order dated 31.03.2022 whereby his departmental appeal was rejected by the Commandant Elite Force, Khyber Pakhtunkhwa Peshawar (respondent No. 2). It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the



appellant might be reinstated into service with back benefits, alongwith any other remedy which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in the Elite Force Mardan. He was falsely implicated in a criminal case vide FIR No.256 dated 14.02.2020 u/s 302/324/353/7A/TA. He was acquitted from the said charges vide judgment dated 06.01.2022. The appellant learned about order dated 30.07.2020 of his dismissal from service, on 16.02.2022. Aggrieved there-from, he preferred departmental appeal on 14.03.2022 to the respondent No. 2 through registered/AD post, who rejected the same on 31.03.2022; hence the instant service 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 District Attorney 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 appellant had never involved himself in the commission of the alleged offence and was falsely implicated in the criminal case. He further argued that allegation about absence from duty was not willful but he was under custody and facing trial before the competent court of law, wherein he was acquitted vide judgment dated 06.01.2022. He further argued that charge sheet was not served upon the appellant nor the enquiry officer contacted the appellant for participation in the enquiry proceedings. According to him, the disciplinary proceedings against the appellant were



supposed to have been kept pending till the outcome of trial in the criminal case, which was well in the knowledge of the department from the day of his arrest. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, at the very outset raised the objection that departmental appeal of the appellant was rejected on the grounds of time limitation, hence the present appeal was not maintainable. On factual side, he argued that the appellant was implicated in the criminal case and remained absent from lawful duty without any leave or prior information with effect from 26.02.2020 till 30.07.2020. He informed that charge sheet alongwith summary of allegations were issued to him and Mr. Shah Jehan Khan Durrani, S.P Elite Force HQrs Peshawar was appointed as Inquiry Officer. The learned District Attorney argued that the enquiry officer recorded the statements and after fulfillment of all codal formalities, the appellant was found guilty. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant, while serving as constable in the Police at Mardan, was dismissed from service vide order dated 30.07.2020, impugned before us. Under the rules, he had to prefer departmental appeal against the impugned order within thirty days of its receipt but the same was done on 14.03.2022 i.e after lapse of more than one year, which was rejected by the competent authority on the ground of being time barred.



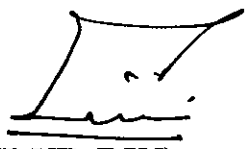
7. Worthy apex court in its judgments reported as 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 SC 951 has held that when appeal of an employee is barred by time before the appellate authority, then the appeal before the Tribunal is not competent. Moreover, it has also been held by the August Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 that when an appeal is liable to be dismissed on the ground of limitation, its merits need not to be discussed.

8. As a sequel to the above discussion, the appeal in hand stands 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 19th day of September, 2023.*


(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S


(SALAH-UD-DIN)
Member (J)

S.A 663/2022

19th Sept. 2023 01. Mr. Shuaib Sultan, Advocate for the appellant present. Mr.


Muhammad Jan, District Attorney for the respondents present.

Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand stands dismissed being not maintainable. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 19th day of September, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S