

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7040/2021

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

Mukhtiar Ahmad Khan S/O Sher Ali Khan, Constable No. 7187, FRP
Police Post, Rescue 15 Gandhi Chowk Naurang Lakki Marwat.
..... (Appellant)

Versus

1. Superintendent of Police, FRP, Lakki Marwat.
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
..... (Respondents)

Arbab Saiful Kamal,
Advocate

... For appellant

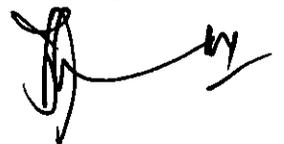
Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution..... 30.06.2021
Date of Hearing..... 22.12.2023
Date of Decision..... 22.12.2023

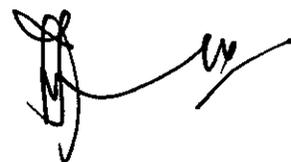
JUDGEMENT

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 dated 13.02.2017 of respondent No. 1, whereby total absence/out of service period of appellant was treated/counted without pay and office order dated 14.10.2019 of respondent No. 2 whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, impugned orders dated 13.02.2017 and 14.10.2019 of the respondents might be modified to the extent of absence/out of service period



without pay and the appellant be allowed consequential benefits of service since the date of dismissal till the date of reinstatement in service, alongwith other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that in the judgment of Khyber Pakhtunkhwa Service Tribunal dated 06.10.2016 in Service Appeal No.138/2015, the authority was directed by the Tribunal to conduct denovo enquiry against the appellant, by providing him opportunity of defense, within two months. The issue of salary and back benefits was subject to the outcome of the enquiry report. On 25.10.2016, the appellant submitted arrival report, as per the judgment of the Tribunal, to respondent No. 1. On 04.01.2017, he was reinstated in service by respondent No. 1 but subject to denovo enquiry after service of charge sheet. On 24.01.2017, he was served with charge sheet and statement of allegations which was replied on 28.01.2017. No denovo enquiry was ever conducted by respondents and respondent No. 1 passed the impugned order dated 13.02.2017 wherein total absence out of service period of the appellant was treated/counted without pay. Feeling aggrieved, the appellant submitted departmental appeal before respondent No. 2 which was rejected on 14.10.2019. On 23.10.2019, he submitted revision petition before respondent No. 3 to treat the intervening period since 04.08.2010 to 06.10.2016 as on duty and to also allow him 06/07 annual increments of the said period. On 12.02.2020 and 08.07.2020, the said stance was repeated by the appellant through petitions which were rejected on 12.07.2020. That order was never

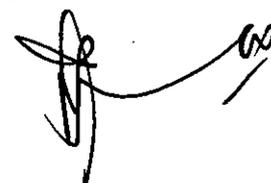


conveyed to the appellant. On a subsequent petition dated 02.04.2021, the order was conveyed to the appellant on 12.06.2021; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint written reply/comments. We have heard the learned counsel for the appellant as well as the learned Deputy 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 when law required to do a thing in a particular manner, then the same should have been done in that manner and not otherwise, but in the instant case, despite directions of Service Tribunal to conduct denovo inquiry strictly in accordance with law, the same was not done by the respondents which was against the mandate of law. He further argued that the order dated 13.02.2017 was unjustified and illegal because no denovo enquiry as per law was conducted. According to him, the appellate order dated 14.10.2019 was a copy of the original order and that it was not in accordance with law. He requested for acceptance of the appeal as prayed for.

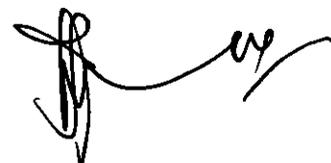
5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the judgment of the Service Tribunal was implemented after completion of due codal formalities. He argued that as per judgment of the Tribunal, the appellant was reinstated into



service and proper denovo enquiry was initiated against him and after its completion, he was found guilty of the charges leveled against him and the enquiry officer recommended that absence and intervening period of the appellant might be treated as absence from duty without pay as he did not perform any official duty during that period. He further argued that departmental appeal as well as subsequent revision petitions of the appellant were examined and rejected being meritless and barred by time. He requested that the appeal might be dismissed.

6. This is a second round of litigation. Through a judgment of this Tribunal dated 06.10.2016 in an earlier service appeal, the appellant was reinstated into service for the purpose of denovo inquiry and the issue of salary and back benefits was subject to the outcome of that inquiry. It was directed by this Tribunal to fully associate the appellant in the denovo inquiry and do the needful within two months. Accordingly, the denovo inquiry was conducted and impugned order dated 13.02.2017 was passed vide which the appellant was reinstated and absence/out of service period has been treated/counted without pay.

7. Arguments and record presented before us shows that the appellant, while serving as Recruit Constable in the Frontier Reserve Police and deputed to undergo initial recruit course at PTC Hangu, absented himself from the said training programme from 06.04.2010 to 10.06.2010 (64 days) without lawful permission. An inquiry was conducted and he was removed from service. Later on, in pursuance of judgment of this Tribunal, he was



reinstated, a denovo inquiry was conducted, as a result of which he was reinstated into service and his absence period was treated as without pay. When confronted about the absence from the training, learned counsel for the appellant stated that he had to go for some course at Allama Iqbal Open University for which he had already registered himself. When further asked to clarify whether the required no objection certificate from his employer had been obtained for the AIOU course and whether leave had been sanctioned by the competent authority, learned counsel for the appellant confirmed that neither NOC was obtained nor leave was got sanctioned. When attention of the learned counsel for the appellant was drawn to the departmental appeal submitted on 10.08.2019, against the impugned order dated 13.02.2017, after lapse of two and a half year and later the service appeal on 30.06.2021, against the appellate order dated 14.10.2019, after lapse of around one year and eight months, and that both departmental as well as service appeal were badly time barred, he argued that it was a money matter and that no limitation ran against such matters. Here we refer to a judgment of the Honourable Supreme Court of Pakistan in a case reported as 2023 SCMR 291 titled "Chief Engineer Gujranwala Electric Power Company (GEPCO) Versus Khalid Mehmood and others", where the august Supreme Court of Pakistan has clearly held that the intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period authorizing a litigant to enforce his existing right within the period of limitation. The august court has gone to the extent of saying that a party cannot sleep over their right to challenge



an order and that it is bound to do so within the stipulated and prescribed period of limitation before the proper forum.

8. After going through the details of the case, we arrive at a conclusion that both the departmental as well as the service appeals are badly time bared and hence not sustainable before the eyes of law.

9. In view of the foregoing, the service appeal is dismissed being barred by time. Cost shall follow the events. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 22nd day of December, 2023.*


(FARZEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Fazle Subhan, PS

SA 7040/2021

22nd Dec. 2023 01. Arbab Saiful Kamal, Advocate for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the
service appeal is dismissed being barred by time. Cost shall
follow the events. Consign. .

03. ~~Pronounced~~ *Pronounced in open court in Peshawar and given under
our hands and seal of the Tribunal on this 22nd day of
December, 2023.*


(FARINA PAUL)
Member (I)


(RASHIDA BANO)
Member (J)

Fazal Subhan PS