

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No: 820/2022

BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)
MRS. RASHIDA BANO ... MEMBER (Judicial)

Abdul Sittar, Ex: Forest Guard, R/O Lailoni, Mohallah Nawayalay,
Tehsil Alpuri, District Shangla. (Appellant)

VERSUS

1. The Secretary Environment Department Khyber Pakhtunkhwa Peshawar.
2. Divisional Forest Officer, Kohistan Watershed Division, Besham.
3. Chief Conservator of Forest, KP, Shami Road, Peshawar.
4. Conservator of Forest/Project Director Watershed Management Project, Abbottabad.

.... (Respondents)

Mr. Asghar Ali
Advocate

... For appellant

Mr. Asad Ali Khan
Assistant Advocate General

... For respondents

Date of Institution.....23.05.2022

Date of Hearing.....02.01.2024

Date of Decision.....02.01.2024

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 instant appeal, impugned order dated 22.01.2010 may graciously be modified and the penalty of termination from service may graciously be converted/modified into compulsory retirement and the appellant may kindly be given/allowed pension with all consequential retirement benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant while holding the post of Forest Guard under the administrative



control of respondent No.2. An FIR dated 29.11.2007 was lodged U/S 120-A, 121, 124-A,364, 448,148, 149, 17(3) Haraba, PPC and 7 ATA. Respondent No.2 terminated the appellant from service vide order dated 22.01.2010. After lodging said FIR, appellant was remained absconder who was arrested on 07.02.2021. The appellant was discharged from the charges leveled against him and was acquitted by the competent court of law vide order dated 17.06.2021. Appellant feeling aggrieved, filed departmental appeal, which was not responded to, hence the instant service appeal.

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 has not been treated in accordance with law and rules. He further argued that the impugned order dated 22.01.2010 is illegal and void ab-initio as no penalty of termination from service is provided under RSO 2000, hence, not sustainable under the law. He further argued that no charge sheet and show cause notice was served upon the appellant, therefore, the impugned order is illegal and is liable to be set aside. He submitted that opportunity of personal hearing was not afforded to him and he was condemned unheard.

5. Conversely, learned Assistant Advocate General on behalf of respondent contended that the appellant was treated in accordance with law and rules. He further contended that appellant absented himself from his official duty with effect from 08.10.2009 and in this regard explanation was called from him. Thereafter, Range Officer Besham Watershed was appointed as enquiry



officer to enquire the facts. The enquiry officer reported that he tried his best to contact the appellant but not succeeded and no one known about his where about. He further contended that minutes of District Coordination Officer Shangla dated 15.12.2010 alongwith FIR No. 226 dated 29.11.2007 were received through which the respondents known that appellant was involved in anti-state activities. On receipt of above minutes of meeting and copy of FIR respondent No.2 terminated the appellant from service vide order dated 22.01.2010. He submitted that appellant filed departmental appeal after lapse of almost eleven years, which is badly time barred. He therefore, requested for dismissal of instant service appeal.

6. Perusal of record reveals that appellant was terminated from service vide order dated 22.01.2010 against which he filed departmental appeal on 08.07.2021 i.e after 11 years and 6 months of passing of impugned order of termination from service. Appellant contended that he was involved in criminal case bearing FIR No.226 dated 29.11.2007 under section 17(3) 120A, 121, 124A, 364, 448, 149 Haraba PPC , 7 ATA of PS Alpuri Shangla and it was after his acquittal/discharge from said case vide order dated 17.06.2021, that he approached the department for redressal of his grievance i.e. reinstatement into service, recovery of back benefits and alternative for retirement.


7. It is an admitted fact that appellant remained absent from his duties and was involved in a criminal case. Appellant in his departmental appeal has very frankly admitted the fact of leaving his place of duty without obtaining any approval or permission from his high ups. That too from 2nd September, 2008 and he remained absent till passing of impugned order dated 22.01.2010 even after it and approached the department by way of filing of departmental appeal


on 08.07.2021, which was not responded within the statutory period of 90 days, therefore, he was required to have filed service appeal before this Tribunal within the next 30 days. The appellant, thereafter remained in deep slumber and filed the instant service appeal on 23.05.2022, which is badly time barred. It is evident from the record that the appellant throughout remained indolent and did not avail his legal remedy timely. Law also favours diligent and not the indolent. We are of the view that the departmental appeal as well as service appeal of the appellant are badly time barred. August Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on ground of limitation, its merits need not to be discussed.

8. So far application for condonation of delay is concerned, appellant in his application for condonation of delay for delay took the plea that he is unaware from the law that after filing of ninety days of filing of departmental appeal if the same was not decided then he will have to file service appeal to this Tribunal. This reason is not plausible because ignorance of law is no excuse and is not valid ground for condonation of delay.

9. For what has been discussed above, we are unison to hold that appeal filed by the appellant is barred by time, hence, dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 2nd day of January, 2024.*


(SALAH UD DIN)
Member (J)
Camp Court, Swat


(RASHIDA BANO)
Member (J)
Camp Court, Swat

ORDER

2nd Jan, 2024

1. Learned counsel for the appellant present. Mr. Asad Ali Khan learned Assistant Advocate General alongwith Sultan Abdul Hameed, Range Officer for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to hold that appeal filed by the appellant is barred by time, hence, dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 2nd day of January, 2024.*



(SALAH UD DIN)
Member (J)
Camp Court, Swat



(RASHIDA BANO)
Member (J)
Camp Court, Swat