

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.1187/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Noman Ullah, Ex-Constable, Elite Force, District Bannu.  
... (Appellant)

**VERSUS**

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. The Additional Inspector General of Police Elite Force, Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Noor Muhammad Khattak  
Advocate ... For Appellant

Mr. Syed Asif Masood Ali Shah  
Deputy District Attorney ... For Respondents

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Date of Institution.....25.02.2020  
Date of Hearing.....07.11.2023  
Date of Decision.....07.11.2023

**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 this appeal, the impugned order dated 26.04.2011 may very kindly be set aside and the appellant may be reinstated into service with all back benefits.**

2. Brief facts of the case are that appellant was serving the respondent department as Constable up to the entire satisfaction of his superiors. Due to some domestic problem he was absented from duty on the basis of which he was served charge sheet alongwith statement of allegation, thereafter, he was



dismissed from service vide order dated 26.06.2011. Feeling aggrieved, he filed departmental appeal, which was rejected by the appellate authority on the ground of limitation, 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 Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned order passed by the respondents is against the law, facts, norms of natural justice, hence not tenable and liable to be set aside. He further argued that appellant has not been treated in accordance with law and rules and as such respondents violated the Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. He contended that before issuing impugned order neither absence notice nor final show cause notice.

5. Conversely, learned Deputy District Attorney argued that appellant was deputed for Basic Elite Training Course-IV but he instead of undergoing the course absented himself. He was directed to join the course but he went missing and remained absent without any leave or prior permission w.e.f 01.05.2010 till issuance of charge sheet alongwith summary of allegation on 01.12.2010. A notice was published in daily newspaper Aaj on 16.06.2011 in which he was redirected to report for duty but he again badly failed to comply with. Resultantly, after fulfillment of all codal formalities, he was dismissed from service by the then Deputy Commandant, Elite Force, Khyber Pakhtunkhwa vide order dated 24.06.2011.

6. Perusal of record reveals that appellant was serving in the respondent department as constable Elite Force when he absented himself from duty/not joining basic Elite Course VI without any prior



leave or permission from his highups due to some personal problems from 17.05.2010. Respondents issued charge sheet and statement of allegation to the appellant on 11.12.2010 by appointing Fazal Muhammad Deputy Superintendent of police HQ Elite Force. Appellant was summoned but he got himself missing. Therefore, notice of absence in shape of publication in daily newspaper AAJ was published on 11.06.2011 but appellant did not turn up for performance of his duties. Therefore major penalty of removal from service was imposed upon him by respondent vide order dated 24.06.2011 with effect from 09.05.2011. Appellant filed departmental appeal on 02.11.2016 wherein he mature that due to financial issues and poverty he went to Sandia Arabia for earning livelyhood in year 2011. Appellant himself admitted in his departmental appeal about the factum of his willful unauthorized absence since the year 2011, when impugned order was of removal from service was passed against him by the respondent. Appellant filed departmental appeal on 02.11.2016, with a considerable delay of five years, four months, and 6 days of passing of order dated 24.06.2011. As superior courts verdicts when departmental appeal is time barred, appeal will incompetent.

7. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.



8. Appellant will have to file service appeal in accordance with section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 and appeal Rules 1986 within thirty days of passing of final order by the appellate authority. Appellate authority rejected departmental appeal of the appellant on 17.10.2017, while appellant filed instant service appeal on 25.02.2020 after a considerable delay of two years and three months, so appeal in hand is also time barred.

9. For what has been discussed above, appeal of the appellant is hopelessly barred by time, hence dismissed. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this day of 7<sup>th</sup> November , 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)


**ORDER**

07.11.2023

1. Appellant alongwith his counsel present. Mr. Syed Asif Masood Ali, Deputy District Attorney Mr. Niaz Muhammad, DSP (Legal) for the respondents present.
2. Vide our detailed judgement of today placed on file, appeal of the appellant is hopelessly barred by time, hence dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this day of 7<sup>th</sup> November , 2023.*



(MUHAMMAD AKBAR KHAN)  
Member (E)



(RASHIDA BANO)  
Member (J)