

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1161/2016

BEFORE: MR. KALIM ARSHAD KHAN CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Muhammad Saeed, Assistant Engineer, Local Government & Rural
Development Department, Khyber Pakhtunkhwa, Peshawar.

..... (Appellant)

VERSUS

1. The Secretary, Government of Khyber Pakhtunkhwa, Local Government,
Elections & Rural Development Department, Civil Secretariat, Peshawar.
2. The Director General, Local Government, Elections & Rural
Development Department, Peshawar.
3. The Secretary Finance Department, Civil Secretariat, Peshawar.

..... (Respondents)

Mr. Shehzada Irfan Zia
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....10.11.2016
Date of Hearing.....02.04.2024
Date of Decision.....02.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J):The service appeal in hand has been
instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act,
1974 with the following prayer:

**“That on acceptance of this appeal, the order dated
13.10.2016 may be set aside and the respondents may be
directed to consider the appellant for ante-dated promotion
as Assistant Engineer (BPS-17) on regular basis w.e.f 1992
when post was available for him with all back and**



consequential benefits. Any other remedy, which this Tribunal deems fit and proper that may also be granted in favour of the appellant.”

2. Brief facts of the case are that the appellant had 37 years of service at his credit. He was qualified diploma holder and was eligible for the post of Assistant Engineer w.e.f 1992 but he was promoted on acting charge basis instead of promotion on regular basis despite the fact that post was lying vacant since 1992. He was placed in Grade 16 vide notification dated 31.05.1999. Then he was promoted to the post of Assistant Engineer (BPS-17) with immediate effect on 30.12.2015. Feeling aggrieved, appellant filed representation seeking ante dated promotion with effect from 1992, which was rejected on 13.10.2016, hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant that the impugned order is against law, facts and norms of natural justice, hence liable to be set aside; that the appellant had not been treated in accordance with law and rules; that the appellant was promoted to the post of Assistant Engineer on 30.12.2015 on acting charge basis, with immediate effect, while he has been working on that since 1992, therefore, he is entitled for promotion as Assistant Engineer since 1992. He requested that instant appeal might be accepted as prayed for.


5. Conversely, learned Deputy District Attorney argued that appellant has been treated in accordance with law and rules; that promotion was always with immediate effect under the promotion policy of the Provincial Government. He submitted that the posts of Assistants Engineers which were lying vacant under



the initial recruitment quota were already filled in amongst the holders of the post of diploma holder Sub-Engineers in the year 1992.

6. Perusal of record reveals that appellant was serving in the respondent department since 1978. Appellant was posted to the post of Assistant Engineer on acting charge basis since 1992. Appellant contended that he was senior most qualified diploma holder and post of Assistant Engineer was vacant. Therefore, appellant was entitled to be promoted from 1992. Appellant through instant appeal seek to antedate his promotion from 30.12.2015 to 1992 but during course of arguments learned counsel requested for grant of pay of higher post BPS-17 upon which appellant performed duties on acting charge basis form 1992. Appellant was promoted to BPS-16 vide notification dated 31.05.1999 and was posted against higher post of BPS-17 Assistant Engineer where he worked till his promotion to the post of Assistant Engineer vide order dated 30.12.2015.

7. Admittedly, appellant worked on acting charge basis against the post of Assistant Engineer BPS-17 from 31.05.1999 till 30.12.2015 but he had not asked even for single time for pay of higher grade/post against which he worked during performance of his duties on acting charge basis which last for fifteen and half years . Appellant's counsel, when asked about it, contended that cause of action accrued to him upon his promotion on 31.12.2015. Promotion order of the appellant was issued on 31.12.2015 and he had filed departmental appeal 12.07.2016 i.e. after lapse of period of six months and thirteen days while Section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 gives the period for filing departmental appeal as thirty days which is given as under:



“Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter

(a) Where an appeal, review or a representation to a departmental authority as provided under the Khyber Pakhtunkhwa Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred, [...]

When confronted with the question of limitation learned counsel argued that the authority had rejected departmental appeal on merit without touching question of limitation, therefore, this tribunal could not touch the question of limitation.

8. Record reveals that the authority vide letter dated 13.10.2016, conveyed to the appellant, that his departmental appeal was rejected, but there was no mention that condonation of delay occurred in filing of departmental appeal to resolve the question of limitation in the letter. We take guidance from PLD 2006 (C.S) 572 which reads as;

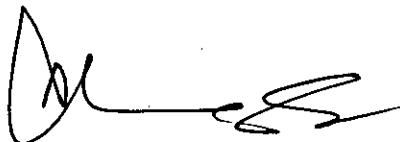
“S.4---Appeal before Service Tribunal---Implied condonation of delay---Question of limitation---Waiver---Departmental appeal was filed with a delay of 5'h years, which appeal was dismissed by competent authority---Service Tribunal without deciding question of limitation as raised by the authorities, partially allowed appeal of civil servant---Validity--- Unless competent authority had condoned the delay with conscious application of mind. Question of limitation would remain open for consideration of Service Tribunal---No waiver on question of limitation, particularly if question of

limitation in filing appeal or representation before departmental authority was raised before Service Tribunal---Service Tribunal was bound to examine such question and record its decision---Concept of implied condonation of delay did not fit in the scheme of law of limitation because application had to be made for seeking condonation, showing sufficient cause to the satisfaction of the forum concerned, who might grant or decline the same---Discretion had to be exercised in a just and legal manner and it could not be exercised arbitrarily or fancifully---Vice of accepting implied condonation of delay was that in absence of grounds and reasons for condonation of delay, it was not possible for Court of appeal to examine the question as to whether delay was rightly condoned---Service Tribunal in assuming that the delay stood condoned impliedly was clearly in error---Supreme Court converted petition for leave to appeal into appeal and set aside judgment passed by Service Tribunal---Appeal was allowed.)”

So, even if the authority has not expressly condoned the delay, it would not amount to waiver of limitation. The Service Tribunal can look into it and decide the matter pertaining to limitation accordingly.

9. For what has been discussed above, we are unison to hold that appeal in hand is hit by law of limitation and is dismissed being barred by time. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 2nd day of April, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)


ORDER

02.04.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to hold that appeal in hand is hit by law of limitation and is dismissed being barred by time. 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 2nd day of April, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

**M.Khan*

05.03.2024

Learned counsel for the appellant present. Mr. Masood Ali Shah, Deputy District Attorney for the respondent present.

Learned counsel for the appellant seeks time for providing information regarding Departmental Grade "B" examination, weather the year in which the appellant passed that exam. Granted. To come up for arguments on 06.03.2024 before D.B. P.P given to the parties.

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

Zia ul Haq

05.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Mr. Izaz Ul Hasan, Assistant Director for the respondents present.

2. Learned counsel for the appellant seeks time for submission of B.Tech Degree of the appellant. Granted. To come up for arguments on 02.04.2024 before D.B. P.P given to the parties.

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

Kaleem ullah

RECEIVED
12/3/24
Peshawar