

S.A No.1495/2019

ORDER

29th May. 2024

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

2. Vide our detailed judgment of today placed on file, we do not find any merit in the instant service appeal which is hereby dismissed. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 29th day of May, 2024.*



(Muhammad Akbar Khan)
Member (E)
Camp Court, Abbottabad



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

Mutazem Shah

Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter."

Therefore, the departmental appeal of the appellant is badly barred by time.

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. Having considered the matter from all angles in the light of material available on file, we do not find any merit in the instant service appeal which is hereby dismissed. Consign.

9. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 29th day of May, 2024.*



KALIM ARSHAD KHAN
Chairman
Camp Court, Abbottabad

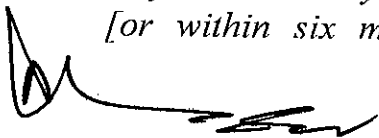


MUHAMMAD AKBAR KHAN
Member (Executive)
Camp Court, Abbottabad

through this appeal the appellant was seeking benefits of a notification, which was passed in the year 2011 i.e. after his retirement, to which Learned counsel for the appellant, though tried to argue that at the first instance the appellant had filed writ petition, which was converted into departmental representation and was sent to the department for decision, therefore, would be no question of limitation but fact remains the same that under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and aggrieved person has to file departmental representation within thirty days of the passage/communication of the order from which he is aggrieved and awaiting ninety days from the date of filing representation if no reply is received, he is to file appeal within next thirty days before this Tribunal. True that the Hon'ble Peshawar High Court, Abbottabad Bench had converted the writ petition into departmental representation vide its order dated 18.04.2018, and the appeal before the Tribunal might be within 120 days from 18.04.2018 but whether the departmental appeal would be considered to be within time i.e. within thirty days of the notification or from the knowledge especially when no date of knowledge was mentioned in anywhere in the appeal/writ petition etc, the learned counsel for the appellant sought some time to assist the Tribunal on the above points, so are the Attorney are directed to assist the Tribunal. To come up for arguments on 27.05.2024 before D.B at Camp Court, Abbottabad. P.P given to the parties."

6. The terms of the above detailed order has self-explanatory but learned counsel for the appellant could not convince us as to why the appellant had not filed departmental appeal within 30 days of the final order, which, in this case, is the extension of benefits of Notification of 2011 to the appellant, who had retired in the year 2010. Besides, Section-4 of the Service Tribunal Act, 1974 gives the period for filing appeal as thirty days. The same is reproduced below:

"4. Appeal to Tribunals.--- 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



jointed Government service in the year 1976 and on attaining the age of superannuation, he got retired from service on 05.03.2010. For the purpose of claiming some financial benefits, he filed Writ Petition No.760-A/2014 before the Peshawar High Court, Abbottabad Bench, which writ petition was treated as departmental appeal with the direction to the respondents to decide the same within two months. But his departmental appeal was not decided, hence, the instant service appeal.

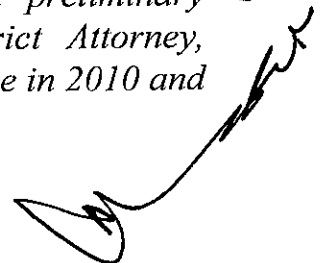
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

5. Today, the learned counsel for the appellant was confronted with the order sheet dated 23.04.2024. The relevant para of the order sheet dated 23.04.2024 is paragraph-02, which is reproduced as under:

"2. Learned counsel for the appellant, to a preliminary objection raised by the learned Deputy District Attorney, submitted that the appellant had retired somewhere in 2010 and



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
 MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**

Service Appeal No1495/2019

Date of presentation of Appeal.....23.07.2018
Date of Hearing.....29.05.2024
Date of Decision.....29.05.2024

Saif Ullah S/O Tawoos R/O Kaks shang Tehsil & District Battagram
.....**Appellant**

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Finance, Peshawar.
2. **Accountant General** Khyber Pakhtunkhwa, Peshawar.
3. **District Accounts Officer, Battagram**.....(**Respondents**)

Present:

Mr. Aman Ullah Khan Salik, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

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APPEAL FOR THE ENFORCEMENT OF TERMS AND CONDITIONS OF THE SERVICE ON THE GROUND, THAT APPELLANT IS ENTITLED TO THE PENSIONARY BENEFITS LIKE OTHER PERSONS PLACED UNDER THE SAME CIRCUMSTANCES AND DENOYAL THEREOF IS DISCRIMINATORY VIOLATIVE OF THE PRINCIPLES OF NATURAL JUSTICE, OFFENSIVE UPON THE PROVISIONS OF THE CONSTITUTION AND HIT BY THE PRINCIPLES OF EQUITY.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case as narrated in the memo and grounds of appeal are that the appellant had

