S.A No.907/2019

ORDER

12th June. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, 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. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of June, 2024.*

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman

Mutazem Shah

07. 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.

08. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of June 2024.

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah.

05. The appellant has challenged the Notification dated 05.03.2016 in this appeal for which he had initially filed departmental representation on 14.02.2019, whereas, he was supposed to have filed the same within 30 days of the impugned order. While Section-4 of the Service Tribunal Act, 1974 gives the period for filing departmental 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 Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter.*"

06. The representation has been filed with a considerable delay and 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.

WAS NOT ENTERTAINED NOR CONSIDERED TILL DATE.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in brief as per appeal is that he was serving in the Police Department as Officiating Sub Inspector; that he was deferred from confirmation as SI owing to non-completion of mandatory period and non-completion of courses, by the Departmental Promotion Committee held on 10.03.2016; that feeling aggrieved, he filed departmental appeal, which was not responded, hence, the instant service appeal.

02. 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.

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

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

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.907/2019

Date of presentation of Appeal.............12.06.2019
Date of Hearing................................12.06.2024
Date of Decision...............................12.06.2024

Bashir Niazi SI Kohat Police Presently serving at Model Court Kohat ....***(Appellant)***

Versus

1. **Inspector General of Police** Khyber Pakhtunkhwa, Peshawar.
2. **Deputy Inspector General of Police** Kohat Region, Kohat.
3. **District Police Officer,** Kohat and seven other private respondents. ....(***Respondents***)

Present:
Syed Mudassir Pirzada, Advocate.............................For the appellant
Mr. Muhammad Jan, District Attorney ....For respondents

....

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION/ORDER NO.2759-8/EC 15.03.2016 ALONGWITH IMPUGNED SENIORITY LIST DATED 15.03.2016 IN WHICH THE APPELLANT SENIORITY HAS NOT BEEN CORRECTED AND THE PROFORMA RESPONDENTS NO.4 TO 10 WERE PROMOTED PRIOR TO THE APPELLANT AND THE APPELLANT WHO ARE SENIOR ACCORDING TO SENIORITY LIST AND THE RESPONDENT NO.4 TO 10 WERE CONSIDER SENIOR HENCE FEELING AGGRIEVED APPELLANT PREFER REPRESENTATION ON 14.02.2019 WHICH