

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
AURANGZEB KHATTAK ... MEMBER (Judicial)

Service Appeal No.4827/2021

Date of presentation of Appeal.....07.04.2021
Date of Hearing.....24.06.2024
Date of Decision.....24.06.2024

Sakeem Dad son of son of Mirdad, resident of Bori Kehter, Tehsil & District Abbottabad (Ex-PST Teacher).....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. **Director** Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Male)**, Abbottabad.....(*Respondents*)

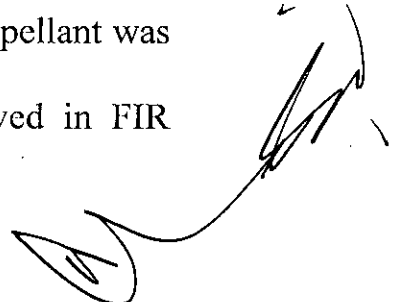
Present:

Mr. Hamayun Khan, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

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APPEAL SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, AGAINST THE IMPUGNED ORDER DATED 10.11.2020 PASSED BY RESPONDENT NO.3 WHEREBY APPELLANT WAS DISMISSED/REMOVED/TERMINATED, FROM SERVICE WITH EFFECT FROM 30.11.2020 WHICH IS ILLEGAL, AGAINST THE LAW, FACTS AND LIABLE TO BE SET-ASIDE.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as enumerated in the memo and grounds of appeal are that appellant was serving as Primary School Teacher; that he was involved in FIR



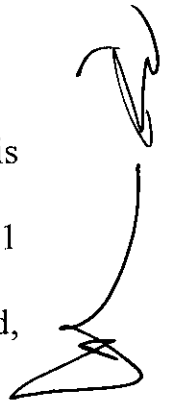
No.12 dated 30.11.2000 U/S 419/420/468/471 PPC read with Section 5(2) PC Act, Police Station ACE, Abbottabad; that the appellant was arrested in the said criminal case, who was released on bail and was ultimately acquitted by the learned Special Judge Anti-Corruption (Provincial) at Abbottabad vide order dated 11.12.2019; that the appellant submitted an application to the SDEO (Male) Havelian for reinstatement in service, however the same was rejected vide order dated 10.11.2020; that the departmental appeal of the appellant was not responded within statutory period, therefore, the appellant filed 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 appellant and learned Deputy 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 Deputy District Attorney controverted the same by supporting the impugned order(s)

05. There is no denial of the fact that the appellant, after his involvement in FIR No.12 dated 30.11.2000 U/S 419/420/468/471 PPC read with Section 5(2) PC Act, Police Station ACE, Abbottabad,

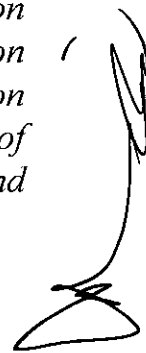


became fugitive from law, against whom Challan U/S 512 Cr.PC was submitted and he was ultimately declared Proclaimed Offender by the Court of competent jurisdiction on 15.04.2003. After his declaration as Proclaimed Offender on 15.04.2003, he remained as such for 14 long years and thereafter surrendered before the law by filing bail before arrest Application No.74 which was dismissed on 13.04.2017. True that there is no record placed on file regarding any departmental action taken against him, but it is equally true that the appellant has also not placed on file nor has in any clear words stated as to what action had been taken against him. It is, however, not disputed that the appellant had not been paid salaries after registration of the criminal case by the Anti-Corruption Establishment on 30.11.2000 and since then till his acquittal on 11.12.2019, he did not make any attempt to get salaries, especially, after his release on post arrest bail on 20.07.2017. His first appeal for reinstatement was submitted to the District Education Officer on 13.02.2020 which too, is barred by time, even after acquittal of the appellant. Similarly, his second appeal moved to the Director Education was on 10.12.2020, which is also barred by time.

06. Not only the departmental appeal is hopelessly barred by time but also the appeal before this Tribunal is barred by limitation. The first appeal of the appellant was made on 13.02.2020. The second appeal or representation is not permitted in the law. The appellant had remained absconder and then Proclaimed Offender for a long time. A

Proclaimed Offender loses his normal rights under the procedural as well as substantive law. In this regard, we rely on the judgment of the Supreme Court reported as 2018 PLC (CS) 93 titled "FEDERATION OF PAKISTAN through Ministry of Defence and another Versus BASHIR AHMED, SBA IN MES, MINISTRY OF DEFENCE, GE (ARMY), NOWSHERA". Relevant para of the said judgment is as under:

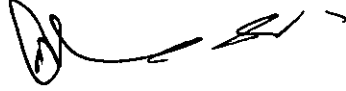
"4. It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent's counsel himself stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012. Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members. To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconsion or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion amounts to showing mistrust in the judicial system. Learned counsel for the respondent was asked to show as to whether in any case, this Court has condoned the absconsion and the departmental action was set aside, he was unable to satisfy this Court on this point. In the circumstances, the case relied upon by the respondent's counsel is of no help to the case of the respondent as it has no relevance in the facts and circumstances of this case."



Service Appeal No.4827/202 titled "Sakeem Dad versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar and others", decided on 24.06.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Aurangzeb Khattak, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

07. In view of the above situation, instant service appeal being barred by time, is dismissed with costs. Consign.

08. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of June, 2023.*



KALIM ARSHAD KHAN
Chairman
Camp Court, Abbottabad



AURANGZEB KHATTAK
Member (Judicial)
Camp Court, Abbottabad

Mutazem Shah

23rd April, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Naseeb Khan, SO for the respondents present.

2. Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. Adjourned but as last chance. To come up for arguments on 24.06.2024 before D.B at camp court Abbottabad. P.P given to the parties.

RECORDED
23/04/2024
JUDGE/CLERK



(M. Akbar Khan)
Member(E)



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

Adnan Shah, P.A

S.A No.4827/2021

ORDER

24th June. 2024

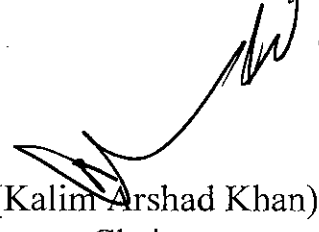
1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Sohail Ahmad Zeb, Litigation Officer for the respondents present and heard.

2. Vide our detailed judgment of today placed on file, instant service appeal being barred by time, is dismissed with costs. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of June, 2024.*



(Aurangzeb Khattak)
Member (J)
Camp Court, Abbottabad



(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

Mutazem Shah