KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.1160/2019

Date of presentation of Appeal.....02.09.2019
Date of Hearing.....03.07.2024
Date of Decision.....03.07.2024

Mr. Buzarg Baig, Sub Inspector (Officiating) Traffic Management School, Kohat.....***(Appellant)***

Versus

1. **The Inspector General of Police,** Khyber Pakhtunkhwa, Peshawar.
2. **The Provincial Police Officer,** Khyber Pakhtunkhwa, Peshawar.
3. **The Deputy Inspector General of Police,** Malakand Region, at Saidu Sharif, Swat.....(***Respondents***)

Present:
Mr. Noor Muhammad Khattak, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney...For respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 01.07.2016, WHEREBY, THE CONFIRMATION ORDER OF THE APPELLANT TO THE RANK OF SUB INSPECTOR HAS BEEN WITHDRAWN AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in brief is that he was serving as Constable in the Police Department (Malakand Region), later on, was promoted to the post of Head Constable and subsequently to the rank of Officiating Assistant Sub

Inspector; that he was further promoted to the rank of Assistant Sub Inspector on 25.01.2016 but the same was withdrawn vide order dated 01.07.2016 by the Regional Police; that feeling aggrieved, he filed departmental appeal but the same was not responded, hence, the instant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 appellant and learned Deputy District Attorney for the respondents.

04. Learned counsel for the appellant submitted that the impugned order dated 01.07.2016 was against law, facts and norms of justice. He submitted that the appellant had not been treated in accordance with law and rules and as such the respondents had violated Article-4 of the Constitution of Islamic Republic of Pakistan, 1973; that the treatment meted out to the appellant was based on discrimination. Further submitted that neither notice nor chance of personal hearing had been given by the respondents to appellant before issuance of the impugned order. Lastly, he submitted that the respondents had acted in arbitrary and malafide manner, therefore, he requested for acceptance of the instant service appeal.

05. As against that learned Deputy District Attorney submitted that the impugned order passed by the respondents was legal and in

accordance with law/rules and no violation of the Constitution of Islamic Republic of Pakistan, 1973 had been made. Further submitted that no discrimination had been committed by the respondents; that there was specific criteria for promotion in the substantive rank under which the appellant was not eligible for promotion. Lastly, he submitted that passing of Upper College Course along with Police Rules 13.10(2) was mandatory for confirmation in the rank of SI and the appellant had not passed the same. Therefore, learned DDA requested for dismissal of the instant service appeal.

06. From the record it is evident that through the instant service appeal, the appellant has challenged the order dated 01.07.2016 by filing departmental appeal on 07.05.2019 which is barred by time 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

07. Besides, the appellant after filing departmental appeal on 07.05.2019, has filed the instant service appeal on 18.09.2019 (after passage of 134 days time).

08. Therefore, not only the departmental appeal but this appeal is also barred by time and dismissed accordingly. Costs shall follow the event. Consign.

09. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of July, 2024.

KALIM ARSHAD KHAN
Chairman

RASHIDA BANO
Member (Judicial)

'Mutazem Shah'