

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 15294/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Syed Mustafa Khan son of Fazal Alam R/O Kutab Khel, Badan, District Orakzai.....(*Appellant*)

Versus

1. Senior Superintendent of Police District Orakzai.
2. Deputy Inspector General of Police, Peshawar.
.....(*Respondents*)

Mr. Muhammad Asif,
Advocate ... For appellant

Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

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| Date of Institution..... | 01.12.2020 |
| Date of Hearing..... | 12.06.2024 |
| Date of Decision..... | 12.06.2024 |

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 06.02.2018, whereby the appellant was terminated from service by the Political Agent Orakzai, against which his departmental appeal was not decided within the statutory period. It has been prayed that on acceptance of the appeal, the appellant might be reinstated into service with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed in Orakzai Levy Force on 15.11.2016. In the year 2018 his mother fell seriously ill and he was busy in her



treatment and could not perform his duty. He was terminated on 06.02.2018 from service without issuing any show cause notice or conducting inquiry or following the service rules by the then Political Agent Orakzai. He moved many applications to the highups but the same were neither decided nor replied. On 18.08.2020, he moved an application to Deputy Commissioner Orakzai District for the issuance of copies of service record and termination order. The said application was marked to DPO and the appellant was informed to approach DIG District Orakzai. The appellant went to the DIG office and the application was handed over to them but they did not reply the same despite lapse of three months period; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply. 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, after presenting the case in detail, argued that the order of termination dated 06.02.2018 and oral refusal of respondents for not deciding the appeal/representation was against the law and facts, hence untenable in the eyes of law. He further argued that the appellant was terminated from service without following the service laws and rules. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was terminated by the then Political Agent, Orakzai due to absence from duty for long time



without prior permission. According to him, the then Assistant Political Agent Upper Orakzai reported that the appellant was absent from duty and did not join his duty despite repeated notices. He further argued that the appellant did not challenge the order of termination dated 06.02.2018 before the appellate authority i.e. Commissioner, Kohat Division, Kohat. He requested that the appeal might be dismissed.

6. The appellant has preferred the instant service appeal against an order of termination of his services dated 06.02.2018, issued by Political Agent, Orakzai Agency. Perusal of the order showed that he was terminated from service, on account of absence from duty, under the Federal Levy Force Rules 2013. As stated by the respondents in their reply, he was issued several notices by the administration of Orakzai Agency to resume his duties but he failed to comply to those notices and never showed for his duty and hence was terminated from service. He preferred departmental appeal on 18.08.2020, addressed to the Deputy Commissioner, Orakzai and District Police Officer, Orakzai. No document was produced before us in order to ascertain whether the appellant was a civil servant, but if we consider the appellant a civil servant, he was bound under the rules to submit his departmental appeal to his competent authority within thirty days of the issuance of termination order, but in his case, he preferred his departmental appeal after lapse of about two and a half year, which was extremely time barred. When confirmed from the learned counsel for the appellant whether he preferred any departmental appeal before the competent authority in the erstwhile FATA, he could not




produce any documentary evidence and relied on the appeal dated 18.08.2020.

7. It is a well-entrenched legal proposition that when an appeal before the departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference is made to cases titled Anwarul Haq Vs. Federation of Pakistan reported in 1995-SCMR-1505, Chairman PIAC Vs. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan Vs. Khyber Zaman and 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. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12th day of June, 2024.*


(FAREEHA PAUL)
Member (I).

Fazle Subhan PS



(RASHIDA BANO)
Member(J)

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12th June, 2024 01. Mr. Muhammad Asif, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, we do not find any merit in the instant service appeal, which is hereby dismissed. Cost shall follow the event. Consign.

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


(FAREEHA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS