

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

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

Service Appeal No. 463/2022

Date of presentation of Appeal.....25.03.2022
Date of Hearing.....10.07.2024
Date of Decision.....10.07.2024

Mr. Iftikhar Khan, SPST (BPS-14) (Rtd:), GPS No. 2, Mushtar Zai,
Peshawar.....(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Finance Department Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
4. The District Education Officer (M), District Peshawar.....(Respondents)

MIR ZAMAN SAFI,
Advocate

For appellant.

MUHAMMAD JAN,
District Attorney

For respondents

CONSOLIDATED JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):-The instant service appeal as well as connected service appeal have been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"That on acceptance of this appeal the appellant may kindly be granted/allowed pro-forma promotion to the post of PSHT (BPS-15) w.e.f. 06.02.2013 with all other consequential benefits. Any other relief which this august Tribunal deems fit

that may also be awarded in favor of the appellant.”

02. Our this single judgment shall dispose of the instant service appeal as well as connected service appeal bearing No. 464/2022 titled “Aziz-ur-Rehman versus The Government of Khyber Pakhtunkhwa, through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar and others”, as common question of law and facts are involved therein.

03. Brief facts of the case are that the appellant was appointed as PST (BPS-09) and later on the post of PST was upgraded to (BPS-12) vide Notification dated 11.07.2012. He retired from service on attaining the age of superannuation vide Notification dated 10.11.2012. After his retirement the respondent department held DPC meeting whereby junior colleagues of the appellant were promoted to the post of SPST (BPS-14) vide order dated 26.01.2013 and subsequently promoted to the post of PSHT (BPS-15) vide Notification dated 06.02.2013. Feeling aggrieved, the appellant approached the Hon’ble Peshawar High Court in Writ Petition No. 4444-P/2015 which was disposed of vide order dated 21.09.2016 with direction to the respondents to complete the process of up-gradation. In compliance with the Hon’ble Peshawar High Court, order passed in Writ Petition No. 2575-P/2017 the appellant was promoted to the post of SPST (BPS-14) w.e.f 11.07.2012 vide impugned order dated 27.09.2017 but subsequent promotion to the post of PSHT (BPS-15) was denied. The appellant submitted departmental appeal for his further promotion to the post of PSHT (BPS-15) on 13.12.2021 which was not responded, hence preferred the instant service appeal on 25.03.2022

04. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for the respondents and have gone through the record with their valuable assistance.

05. 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 comments submitted by the respondents as well as the impugned order(s).

06. It is evident from the record that the appellants were promoted to the post of SPST (BPS-14) vide order dated 27.09.2014 in compliance with the Hon'ble Peshawar High Court vide order dated 28.09.2017 passed in Writ Petition No. 2757-P/2017. The appellant filed departmental appeal for further promotion to the post of PSHT (BPS-15) on 13.12.2021.

07. The departmental appeal of the appellants were badly time barred. The settled proposition of law dictates that when an appeal of the civil servant is time barred before the appellate authority, then the appeal before the Service Tribunal is also not competent and maintainable. This Tribunal can take merits of the case only when the appeal is within time. August Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation then its merits need not to be discussed.

08. Foregoing findings in view the instant service appeal as well as connected service appeal being badly time barred are not maintainable hence stands dismissed. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10th day of July, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(MUHAMMAD AKBAR KHAN)
Member (E)

ORDER
10.07.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our detailed judgment of today, separately placed on file, the instant service appeal being badly time barred is not maintainable hence stands dismissed. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 10th day of July, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(MUHAMMAD AKBAR KHAN)
Member (E)

25.06.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Arshad Khan, ADEO for the respondents present.

2. Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 10.07.2024 before D.B. P.P given to the parties.

SCANNED
K-57
POSTED



(Muhammad Akbar Khan)
Member (E)



(Rashida Bano)
Member (J)