BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

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

Service Appeal No. 7895/2021

Date of presentation of Appeal.....10.12.2021
Date of Hearing.....10.07.2024
Date of Decision.....10.07.2024

Masud Ur Rehman, (Retd) IG Prisons (BPS-20), Khyber Pakhtunkhwa..... **(Appellant)**

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa Peshawar.
4. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.....**(Respondents)**

SYED NOMAN ALI BUKHARI,
Advocate --- For appellant.

MUHAMMAD JAN,
District Attorney --- For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):-The instant service appeal has 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 rejection order dated 09.11.2021 communicated to the appellant on 16.11.2021 may please be set aside and the appellant may be granted antedated promotion from his due date which is from the date***

the post of IG Prisons became available for promotion quota. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant."

02. Brief facts of the case are that the appellant was appointed as Superintendent Jail (BPS-17) in the Khyber Pakhtunkhwa Prison Department vide order dated 23.01.1988. He was promoted to the rank of Superintendent Central Prison (BPS-18) and further promoted to (BS-19) vide Notification dated 21.12.2005. The respondent department issued final seniority list of (BS-19) dated 27.07.2011 whereby the appellant was at serial No. 1. Being senior most and eligible for the post of IG Prison (BS-20) his name was not placed before the Provincial Selection Board. The appellant submitted departmental representation on 23.02.2012 for his consideration to the post of IG Prison (BS-20) but he was not considered and vide Notification dated 09.03.2012 the post of IG Prisons was filled in by transfer instead of making promotion, therefore, the appellant challenged the said Notification before the Hon'ble Peshawar High Court in Writ Petition No. 1001-P of 2012 which was decided by the Hon'ble Peshawar High Court vide order dated 06.06.2012 and directed the respondents to decide the departmental representation of the appellant within 20 days. Thereafter the petitioner filed several applications for implementation of court directions, but the same was not decided. The respondent department issued two orders dated 01.08.2013 & 26.12.2013 whereby the post of IG Prisons was filled in by transfer instead of filling the same by promotion. Feeling aggrieved, the appellant filed departmental representation on 27.12.2013 which was not responded. Thereafter the appellant approached the Hon'ble Peshawar High Court through Writ Petition

No. 629-P/2014 which was allowed vide judgment dated 24.12.2014 with the direction to respondent No. 1 to convene the meeting of PSB and consider the appellant for promotion to the post of IG Prisons in (BPS-20) within one month positively. In compliance of the judgment of Hon'ble Peshawar High Court, the case of promotion of the appellant to the post of IG Prisons (BPS-20) was placed before Provincial Selection Board in its meeting on 30.01.2015 but he was deferred due to the reason that the post IG Prisons required administrative and managerial skills and as such Senior Management Course (SMC) was must. The Service Rules for the post was revised and notified on 30.11.2016 making Senior Management Course (SMC) mandatory for promotion to the post of IG Prisons. After successfully attending the Senior Management Course (S.M.C) in 2018 the appellant was promoted to the post of IG Prisons (BPS-20) on regular basis with immediate effect vide Notification dated 03.10.2018. He was retired from service on attaining the age of superannuation on 14.04.2021 vide Notification dated 08.04.2021. Thereafter the appellant filed appeal to the Chief Minister, Khyber Pakhtunkhwa dated 09.06.2021 for antedation of promotion to the post of IG Prisons (BPS-20) w.e.f 29.07.2011 instead of 03.10.2018 which was rejected vide letter dated 09.11.2021, hence preferred the instant service appeal on 10.12.2021.

03. Notices were issued to the respondents, but they failed to submit the reply/comments and were placed ex-parte vide order dated 17th June, 2022 due to their non-appearance before the Tribunal however, the learned District Attorney was provided opportunity of arguments.

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. It is evident from the record that the appellant was promoted to the post of IG Prisons vide impugned Notification dated 03.10.2018 on regular basis with immediate effect and not from the date (29.07.2011). He was retired from service on attaining the age of superannuation on 14.04.2021 vide Notification dated 08.04.2021. The appellant filed departmental appeal for antedation of his promotion on 09.06.2021 which was rejected vide letter dated 09.11.2021.

06. The departmental appeal of the appellant was 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.

07. As a sequel to the foregoing discussion, the instant service appeal is badly time barred and is not maintainable hence stands dismissed. Costs shall follow the event. Consign.

08. 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)

Kamranullah

ORDER

10th July, 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 is badly time barred and 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)

Kamranullah