

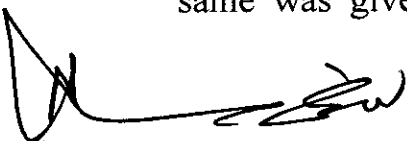
Service Appeal No.1378/2022 titled "Izhar Ahmad Vs. Government of Khyber Pakhtunkhwa"

ORDER

29<sup>th</sup> July, 2024

**Kalim Arshad Khan, Chairman:** Learned counsel for the appellant and Mr. Muhammad Jan, District Attorney for the respondents present.

2. The case at hand involves the facts that appellant was serving as Junior Clerk in the office of the Advocate General Khyber Pakhtunkhwa: that colleagues of the appellant were allegedly promoted out of turn vide order dated 03.07.2015 while the appellant was not granted promotion; that the said promotion was assailed by the appellant through a departmental appeal followed by Service Appeal No.13/2016 and the Tribunal vide judgment dated 29.09.2019 remitted the matter back to respondents to again place the case of promotion of Junior Clerks against the post of Senior Clerks before the DPC including the private respondents and the appellant for consideration; that in compliance of the judgment, DPC was held on 25.09.2020, whereby, the appellant alongwith other colleagues was recommended and promoted to the post of Senior Clerk, however, from 25.09.2020 till 10.02.2022, no order of promotion was issued and the appellant was serving as Junior Clerk; that on 10.02.2022, order regarding promotion was issued, however, instead of giving effect to the promotion from 25.09.2020, the same was given effect from 10.02.2022; that the appellant



filed departmental appeal but the same was not responded, hence, the instant service appeal.

3. Arguments heard. Record perused.

4. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, appellant was promoted vide impugned order dated 10.02.2022 against which he filed departmental appeal on 19.05.2022 (after passage of 98 days) and then filed the instant service appeal on 19.09.2022 (after passage of 123 days). While Section-4 of the Service Tribunal Act, 1974 prescribed the period of limitation for filing appeal as thirty days. The same is reproduced below:

*"4. Appeal to Tribunals.--- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter."*

5. The appellant has filed departmental appeal on 98<sup>th</sup> day of passage of impugned order instead of filing the same within thirty days. While he has approached this Tribunal by

*29/7/24*

filing the instant service appeal after 123 days instead of 90 days. Therefore, not only the departmental appeal but the service appeal also barred by time. Reliance is placed on 2007 SCMR 513 titled "Muhammad Aslam Vs. WAPDA and others", wherein, the Supreme Court of Pakistan has held that:

*"If departmental appeal was not filed within the statutory period, appeal before Service Tribunal would not be competent. Civil Servant was non-suited for non-filing of appeal within time, therefore, Supreme Court declined to interfere with the judgment passed by Service Tribunal. Leave to appeal was refused."*

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

7. *Pronounced in open Court at Peshawar given under our hands and seal of the Tribunal on this 29<sup>th</sup> day of July, 2024.*

  
(Rashida Bano)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah \*