

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.4945/2020

**BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN**  
**MRS. RASHIDA BANO ... MEMBER (J)**

**Mr. Said ul Israr Ex.FC No. 1191, S/O Said Johar R/O Mohallah Mansoor Abad, P.O Khass, Charbagh, Tehsil Razar, District Swabi.**

.... **(Appellant)**

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Interior Civil Secretariat, Peshawar.
2. Inspector General of Police Khyber Pakhtunkhwa Central Police Officer, Peshawar.
3. Additional Inspector General of Police Headquarter, Khyber Pakhtunkhwa, Peshawar.
4. Regional Police Officer Mardan.
5. District Police Officer, Swabi.

.... **(Respondents)**

Mr. Ayaz Khan Khalil  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

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Date of Institution.....15.04.2020  
Date of Hearing.....18.07.2024  
Date of Decision.....18.07.2024

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of this appeal, the impugned termination and other orders dated 17.10.2017, 19.01.2018 and 17.03.2020 may very graciously be declared illegal and void ab-initio and the**



same be struck down, and as a consequential relief the appellant's services be restored with all back benefits. Any other remedy which is deemed fit by this Hon'ble Tribunal in the interest of justice, may also be granted in favour of the appellant."

2. Brief facts of the case are that appellant was appointed as Constable in Police. There is a rivalry between the appellant's family, and murder charges were leveled against the appellant's brother, who was leaving the house with no one to look after it, that due to rivals, the appellant threaten by the opponent due to which appellant also away from the home. During this period the appellant was absent from duty and respondents dismissed him from service vide order dated 17.10.2017. Feeling aggrieved, he filed departmental appeal which was dismissed vide order dated 19.01.2018. Then he filed revision petition which also met the same fate, hence present service appeal.

3. Respondents were put on notice who submitted their comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules; that the impugned orders passed by the respondents are against the law and facts on record, hence liable to be set aside; that services of the appellant has been terminated on disregard of the procedure prescribed in Khyber Pakhtunkhwa Government (Efficiency & Discipline), Rules, 1973; that no proper inquiry has been conducted by the respondents and never given opportunity to the appellant for personal hearing and condemned unheard;

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant has not timely informed the department regarding the threats nor he moved any application for leave rather he absented himself from his lawful duty. He further contended that absence of

the appellant was willful and he was dismissed from service after proper departmental inquiry conducted in accordance with law/rules.

6. Perusal of record reveals that appellant was serving as Constable in the respondent department when on 12.05.2017 absented himself from performance of his official duties on the basis of which he was proceeded against departmentally, which resulted into his dismissal from service vide impugned order dated 23.10.2017.

7. Appellant admits the factum of absence from duty but termed it as a result of threats/compulsion and criminal charge in a murder case due to which their enemies threaten him and as such he was unable to attend his office. This excuse is not plausible because appellant being a member of discipline force was required to inform his senior/high ups about the threats and murders of some other person by his brother but he even did not bother to inform his immediate boss which is against the service discipline because being a civil servant appellant was duty bound to obtain proper leave with by submitting proper application. Otherwise too, reason advanced by the appellant is not plausible and appellant can very easily obtain leave by submitting an application.

8. Moreover, appeal of the appellant was dismissed vide order dated 19.01.2018 which was rejected under the rules. He was required to challenge it within next 30 days by filing service appeal but he filed revision petition on 09.12.2019 after considerable delay of ten months and twenty-one days, which is badly barred by time.

9. 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 Anwar ul Haq vs.

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.

10. For what has been discussed above, the appeal in hand dismissed being barred by time. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18<sup>th</sup> day of July, 2024.*



**(RASHIDA BANO)**  
**Member (J)**



**(KALIM ARSHAD KHAN)**  
**Chairman**

**ORDER**

18.07.2024

1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand dismissed being barred by time. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18<sup>th</sup> day of July, 2024.*



**(RASHIDA BANO)**  
Member (J)



**(KALIM ARSHAD KHAN)**  
Chairman