

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.385/2022**

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

Date of presentation of appeal .....15.03.2022  
Dates of Hearing.....11.07.2024  
Date of Decision.....11.07.2024

**Mr. Faisal Qadir, Ex-Driver (BPS-06) Administration Department,**  
**Civil Secretariat, Khyber Pakhtunkhwa, Peshawar. ... (Appellant)**

Versus

- 1. The Chief Secretary, Khyber Pakhtunkhwa Peshawar.**
- 2. The Secretary Administration Department, Civil Secretariat, Khyber Pakhtunkhwa Peshawar. ... (Respondents)**

Present:

Mr. Mir Zaman Safi, Advocate.....For appellant.

Mr. Muhammad Jan, District Attorney.....For respondents.

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE impugned ORDER DATED 22.03.2018, WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE IMPUGNED APPELLATE ORDER DATED 22.08.2019, WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.**  
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**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** Brief facts gathered from the memo and grounds of appeals are that the appellant was serving as Driver (BPS-06); that during service a message was received to the appellant about severe illness of his wife, so the appellant left his duty and reached to his home and putting his wife to the Ayub Teaching Hospital, Abbottabad for examining of her illness;

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that due to sever illness, wife of the appellant was admitted in the said hospital and during such period of illness there was no other male or female member available in family of the appellant to look after of his ailing wife; that the appellant did not approach his department to inform his high ups regarding the facts; that the appellant filed an application to the competent authority to transfer him to district Abbottabad but no reply was received to the appellant; that the appellant was later on approached his department for rejoining of his duty but the authority were not willing to do so; that the appellant was informed that he was removed from service vide impugned order dated 22.03.2018; that feeling aggrieved from the impugned order, he filed departmental appeal on 28.06.2019 which was rejected on 22.08.2018, hence, the instant service appeals.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. 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).

6. Perusal of the record reveals that appellant absented himself from performance of his duties on 10.08.2018 without prior approval or permission of his high ups by submitting proper application due to which showcause notice was duly received by the appellant and he failed reply of the same .the



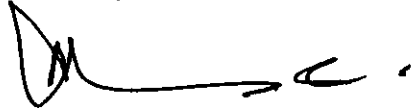
appellant had taken the plea of illness of his wife but after submitting reply, he again absented himself from duty place. Authority than on 8.01.2019 issued charge sheet and statement of allegation by appointing one Taj Muhammad section officer as inquiry officer who after conducting inquiry submitted report on 12.02.2019, by mentioning there in that wife of the appellant remain admitted in Hospital for only six days and appellant is habitual absentee. Authority after issuing final showcause notice, passed impugned order dated 22.03.2019 imposing major penalty of removal from service. On 28.06.2019, Appellant filed departmental appeal against impugned order dated 22.03.2019. which under the law and rule of Khyber Pakhtunkhwa was required to have been filed within 30 days of passing of impugned order so department appeal was barred by 3 months and 5 days when department appeal is far barred appeal is incompetent.

7. 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 Anwarul Haq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC vs. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

8. Appellant filed departmental appeal on 22.06.2020 under section 4 of Khyber Pakhtunkhwa servant Tribunal Act which was rejected on 22.08.2019 which was required to have been challenged in service appeal within 30 days of its decision but instant service appeal was filed on 15.03.2022 after a lapse of two years , 6 months and 20 days which is hopelessly bought by time so departmental appeal as well as service appeal are barred by time, therefore

appeal in hand is hereby dismissed being not maintainable. Costs shall follow the event. Consign.

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



**(KALIM ARSHAD KHAN)**  
**CHAIRMAN**



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

**ORDER**

11.07.2024

1. Learned counsel for the appellant present. Mr. Mohammad Jan, learned District Attorney alongwith Amjad Ali, Section Officer for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to dismiss the appeal in hand being not maintainable. 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 11<sup>th</sup> day of July, 2024.*

  
(KALIM ARSHAD KHAN)  
Chairman

  
(RASHIDA BANO)  
Member (J)

\*M.Khan\*