

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

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

Service Appeal No.219/2023

Date of presentation of appeal20.01.2023
Dates of Hearing.....11.07.2024
Date of Decision.....11.07.2024

Shahid Akbar S/O Wali Akbar R/O Mohallah Tawas Khel, Village Sangao Tehsil Katlang, District Mardan.....(*Appellant*)

Versus

1. **Government** of Khyber Pakhtunkhwa through Secretary Local Government & Rural Development, Civil Secretariat Peshawar.
2. **Director General**, Local Government & Rural Development & Rural Development of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. **Deputy Commissioner**, District Mardan.
4. **Assistant Director** Local Government & Rural Development, Mardan.
5. **Village Secretary**, VC Rorya-01 Tehsil & District Mardan.(*Respondents*)

Present:

Mr. Asif Ali Shah, 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 LETTER NO. AD LG (MRD) / ESTAB / SERVICE/2020-M499-A DATED. 23.10.2020.
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JUDGMENT

RASHIDA BANO, MEMBER (JUDICIAL): Brief facts gathered from the memo and grounds of appeals are that the appellant was appointed as Naib Qasid vide order dated 09.03.2020; that the appellant was posted at Village Council Rorya-01, Tehsil and District Mardan; that the appellant was performing duties in the office of respondent No.5 but without any reason, his

salary was stopped and was informed that there is no vacant post for the appellant; that the appellant filed writ petition No. 3364-P/2020; that during pendency of writ petition, the appointment order of the appellant was withdrawn vide impugned order dated 23.10.2020; that the writ petition of the appellant was dismissed on the ground of maintainability vide judgment dated 12.05.2022; that the appellant had filed review petition against order/judgment dated 12.05.2022 but the same was also dismissed vide order dated 30.11.2022; that the appellant had filed departmental appeal on 30.11.2022, which was rejected on 15.01.2023, 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 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. Record reveals that appointment order of the appellant was withdrawn vide order dated 23.10.2020 which was annexed with the comments by the respondents filed in writ petition bearing No. 3346-p/2020 which was filed by the appellant when he was told that there was no vacant post and his salary was stopped in the month of July 2020. When factum of withdrawal of his appointment order came into the knowledge of appellant he withdrew his writ petition bearing No. 3346-p120 with permission to file fresh one and filed writ



petition bearing No.3662-P\2021 on 9.7.2021 wherein appellant challenged impugned order of withdrawal of his appointment dated 23.10.2020 writ petition No. 3662-P/2021 was dismissed due to bar contained in Article 212 of constitution of Islamic Republic of Pakistan vide order dated 12.05.2022. Appellant instead of filing departmental appeal under section 4 of Khyber Pakhtunkhwa service Tribunal Act filed review petition before worthy Peshawar High Court on 9.6.2022 bearing No. 89-P/2022, which also met the same fate of dismissal on 30.11.2022.

7. Appellant filed departmental appeal on 16.7.2020 against verbal order of AD (Senior) LG&RDD Mardan of stopping him from working as Naib Qasid and he then filed writ petition bearing No. 3346-P/2020. When appellant came to know about written order of withdrawal of his appointment dated 23.10.2020 under the law he was required to have challenged that within 30 days when he came to know about but he kept mum and remained silent till 30.11.2022. No doubt appellant filed writ petition and challenged impugned order but that was wrong forum and time consumed in proceeding conducted in a wrong forum is not an excuse and plausible reason due to which time cannot be condoned. When writ petition bearing NO. 3662-P/2021 was dismissed on 12.5.2022, the appellant was required to have filed departmental appeal which he filed on 30.11.2022 after a considerable delay of 6 months and 15 days even after dismissal of writ petition which is hopelessly barred by time.

8. In our humble view, appellant was required to challenge impugned order when that came into his knowledge during pendency of writ No. 3346-p/2020 and instead of filing another writ petition bearing No. 3662-p/21, he




had to file departmental appeal in July 2021 but adopted wrong way and approached wrong forum.

8. 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 v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

9. For what has been discussed above, we are unison to dismiss the appeal being incompetent on ground of limitation. Costs shall follow the event. Consign.

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


(KALIM ARSHAD KHAN)
Chairman


RASHIDA BANO
Member (J)

06th June, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Learned counsel for the appellant seeks some time for preparation of brief. Granted. To come up for arguments on 11.07.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar



(Fareeha Paul)
Member (Executive)



(Kalim Arshad Khan)
Chairman

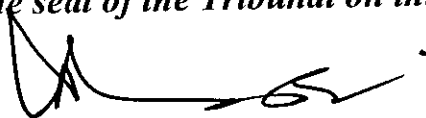
Naveem Amin

ORDER

11.07.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney alongwith Wisal Khan, Assistant for official respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to dismiss the appeal being incompetent on ground of limitation. Costs shall follow the event. Consign.

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



(KALIM ARSHAD KHAN)
Chairman



RASHIDA BANO
Member (J)

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SA 219/23

29th Nov.2023

01. Counsel for the appellant present. Mr. Habib Anwar, Addl. AG alongwith Wisal Khan, Assistant for the respondents present.

02. Reply/comments on behalf of the respondents received through office which is available on file, a copy whereof is handed over to learned counsel for the appellant. To come up for rejoinder, if any, and arguments on 12.03.2024 before the D.B. Parcha Peshi given to the parties.


(Fareeha Paul)
Member(E)


Fazle Subhan, P.S

12.03.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney Mr. Wilayat Shah, Progress Officer for the respondents present.

2. Representative of respondent is directed to produce entire record of inquiry proceedings on the basis of which appellant was penalized. Adjourned. To come up for record and arguments on 06.06.2024 before the D.B. PP given to the parties.

SCANNED
KPS
Fazle Subhan


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)