

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

**Service Appeal No. 406/2019**

**BEFORE: MRS. RASHIDA BANO ... MEMBER (J)**  
**MR. AURANGZEB KHATTAK ... MEMBER (J)**

Muhammad Ismail Retired Senior Clerk S/o Rahim Bakhsh, Caste Siyal, R/o Gulshan Hamid Colony opposite Wensam College, Multan Road, Tehsil & District Dera Ismail Khan. ... (Appellant)

**VERSUS**

1. Commissioner, D.I.Khan Division Dera Ismail Khan.
2. Political Agent (Now Deputy Commissioner) TA, District South Waziristan, at Tank.
3. Office Superintendent DC's Office Tribal Area, District South Waziristan, at Tank.
4. Mr. Tufail Ahmad Accountant, PA's Office District South Waziristan at Tank. .... (Respondents)

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Mr. Muhammad Abid,  
Advocate

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For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

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For respondents

Date of Institution.....21.03.2019  
Date of Hearing .....31.07.2024  
Date of Decision .....31.07.2024

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**JUDGMENT**

**RASHIDA BANO, MEMBER (J):-** This judgment addresses the appeal brought forth by the appellant against the denial of his promotion from Senior Clerk BPS-9 to Assistant BPS-14, which the appellant claims was due to him effective April 11, 2010, on the eve of Mr. Haibat Khan retirement. The appellant filed departmental appeals on April 06, 2010 in advance and then April 12, 2013, which were not responded, hence the appellant filed the instant service appeal for redressal of his grievance.



2. Respondents were put on notice. Official respondents submitted their reply on appeal, while private respondent No. 4 was proceeded against ex-parte vide order dated 29.10.2020 passed by this Tribunal.

3. Learned counsel for the appellant has argued that the appellant was promoted to the post of Senior Clerk BPS-9 on March 19, 2009, and was eligible for promotion to the post of Assistant BPS-14, therefore, he submitted his application for promotion in advance on April 6, 2010, requesting consideration during the impending DPC meeting scheduled for May 17, 2010 but he was illegally not promoted. He next argued that the Accountant misrepresented the date of his promotion as September 19, 2009, rather than the correct date of March 19, 2009. He further argued that this mistake misled the DPC regarding his eligibility and that such clerical errors should not have been allowed to undermine his claims. He also argued that the appellant served in various roles, including in higher grade positions (BPS-12, BPS-14 and BPS-16) for a total of approximately 15 years, therefore, under government policy Part-V-15, his service in officiating roles must be considered in determining probation periods and eligibility for promotion. He next contended that his case was deliberately overlooked in the DPC meeting of May 2010 due to the Accountant's actions, which resulted in a significant delay in addressing the rightful promotion of the appellant despite numerous attempts to bring his situation to the attention of higher authorities but he was continuously neglected. He further contended that on January 3, 2019, the case of the appellant was placed before the DPC but he was not considered for promotion, contradicting the principles of fairness and the treatment of employees who have served long and faithfully. He also contended that the post of Assistant BPS-14, vacated

by Mr. Haibat Khan, remained unfilled, therefore, his promotion was not only reasonable but essential, given his seniority and extensive experience. In the last he argued that the appellant may be promoted with retrospective effect i.e with effect from 11.04.2010 with all back benefits.

4. Conversely, Learned Deputy District Attorney for the respondents argued that as per government policy, 25% of vacancies are to be filled through initial recruitment while 75% are reserved for promotion quota and the post vacated by Mr. Haibat Khan on April 10, 2010, was designated for initial recruitment. He next argued that any decision regarding inclusion in the DPC was appropriately made by the Deputy Commissioner, who has the authority to determine eligibility based on established rules and citation of an incorrect date is a minor clerical mistake that did not fundamentally impact the overall eligibility process. He further argued that promotions are to be effective immediately and that once the appellant retired on February 28, 2014, he could no longer be considered for promotion due to his retirement. He also argued that based on existing regulations and the saturation of the promotion quota, the appellant's case could not be prioritized for immediate consideration during the relevant DPC meetings, underscoring a systemic limitation rather than a denial of justice. In the last he argued that the appeal of the appellant is badly barred by time, therefore, the same is liable to be dismissed on this score alone.

5. 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.

6. The perusal of the case file reveals that the appellant was promoted to the post of Senior Clerk (BPS-9) with effect from March 19, 2009, as per the order issued by the Political Agent, SWA, dated April 1, 2009. The appellant asserted his eligibility for promotion to the next tier, specifically for the post of Assistant (BPS-14), against a vacant post resulting from the retirement of Mr. Haibat Khan on April 10, 2010. Initially, the appellant submitted a departmental appeal on April 6, 2010 in advance for his promotion against vacant post resulting from the retirement of Mr. Haibat Khan on April 10, 2010, requesting the competent authority to consider his case in the forthcoming Departmental Promotion Committee (DPC) meeting scheduled for May 17, 2010. However, the appellant was not promoted due to the lack of three years of service as a Senior Clerk (BPS-09), which was a prerequisite for promotion to the next higher scale. Subsequently, the appellant filed second departmental appeal on April 12, 2013, which remained unresolved. Additionally, respondents have annexed another departmental appeal dated November 29, 2017, indicating that the appellant filed successive departmental appeals, which are not permitted under service laws. It is evident that the appellant has filed the current appeal beyond the stipulated time frames as set forth in Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. The procedural requirement under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 mandates the filing of a single departmental appeal before approaching the Tribunal. The appellant's failure to comply with this step further invalidates the current appeal. The Act further prescribes specific time limits within which an aggrieved party must seek judicial intervention. The appellant's first formal request, dated April 12, 2013,

highlights a significant delay in seeking resolution through appropriate judicial channels. The prolonged passage of time from the initial grievance to the filing of the current appeal denotes a lack of due diligence on the part of the appellant. Thus, this appeal is deemed time barred. Furthermore, the appellant filed successive departmental appeals and it is a well-established principle in service law that successive applications or appeals are not allowed. Permitting such practice would lead to a continuous cycle of appeals, consequently generating undue delays and impairing the efficient functioning of the department.

7. The principle of "delay or laches" is pivotal in determining the viability of this appeal. The maxim "Vigilantibus non dormientibus jura subveniunt," meaning "the law aids those who are vigilant but not those who are sleeping over their rights," aptly encapsulates the essence of the matter before us. It is essential to emphasize that the legal framework expects parties to be proactive in safeguarding their rights and interests, lest they risk forfeiting these rights due to inaction. In the instant appeal, the appellant has not demonstrated the requisite diligence in pursuing his claim. The timeline of events indicates a substantial delay that not only raises questions about the appellant's commitment to protect his legal rights but also adversely affects the respondent's ability to defend the claims against them. The law recognizes the right to seek redress, however, it equally imposes a duty upon the appellant to act within a reasonable timeframe to ensure the integrity of the judicial process. Furthermore, Section 3 of the Limitation Act, 1908, mandates that it is the inherent duty of the Courts to consider and address issues of limitation. This obligation persists even if the respondent does not raise a defense based on delay. It is the duty of the Court to examine whether

the appellant acted with the necessary vigilance in the pursuit of his legal remedies. It is evident that the appellant acted with undue delay, failing to assert his rights promptly. This lack of promptitude is not simply a procedural oversight, it implicates the fundamental principles of equity and justice which govern the legal landscape. The delay undermines the reliability and predictability of the legal process, as responsive litigation is critical to achieving just outcomes. The Tribunal, therefore, concludes that the appellant's inaction constitutes a sufficient basis to bar him from the relief sought in this appeal. It is a fundamental principle of law that justice delayed is justice denied, and in this context, the appellant's failure to act expediently demonstrates a lack of vigilance that the law does not countenance.

8. Coming to the merit of the case, the appellant was promoted to the post of Senior Clerk (BPS-9) with effect from March 19, 2009, vide order dated April 1, 2009 issued by the Political Agent, South Waziristan Agency. The appellant claims eligibility for promotion to the next tier following the retirement of Mr. Haibat Khan on April 10, 2010. The required length of service for promotion to the post of Assistant (BPS-14) is established as three years. The appellant falls short of this requirement. The Departmental Promotion Committee (DPC) convened on May 17, 2010, under the chairmanship of the Political Agent, concluding with the promotion of Mr. Ali Man Shah, Senior Clerk, to the position of Assistant (BPS-14). This decision was made based on the eligibility criteria. It is further acknowledged that Mr. Ali Man Shah filed departmental appeal regarding his promotion, which was accepted by the Commissioner of D.I. Khan Division. According to government policy regarding recruitment and promotion quotas, 25% of vacancies

are designated for initial recruitment, while 75% are reserved for promotions. The vacancy created by the retirement of Mr. Haibat Khan on April 10, 2010, was designated for initial recruitment, thus excluding the appellant from consideration under the promotion quota. Therefore, the appellant does not meet the eligibility requirements for promotion to the post of Assistant (BPS-14). The vacancy in question was allocated for initial recruitment as per government policy, and the appellant deficiency in the required length of service further solidifies this conclusion.

9. In view of the above, the appeal in hand being barred by time as well as meritless is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 31<sup>st</sup> day of July, 2024.*


  
(AURANGZEB KHATTAK)  
Member (J)


  
(RASHIDA BANO)  
Member (J)

**ORDER**

31<sup>st</sup> 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 judgment of today placed on file, the appeal in hand being barred by time as well as meritless is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 31<sup>st</sup> day of July, 2024.*


  
(Aurangzeb Khattak)  
Member (Judicial)


  
(Rashida Bano)  
Member (Judicial)



21.05.2024 1. Clerk to learned counsel for the appellant present. Mr. Arshad Azam learned Assistant Advocate General for the respondents present.

2. Former stated that learned counsel for the appellant is not in attendance due to general strike of the lawyers. Adjourned. To come up for arguments on 20.08.2024 before D.B at camp court, D.I.Khan. P.P given to the parties.

  
(Fareeha Paul)  
Member (E)  
Camp Court, D.I.Khan

  
(Rashida Bano)  
Member (J)  
Camp Court, D.I.Khan

kalteemullah

28.06.2024 Consequent upon approval of the Hon'ble Chairman, the present old appeal is fixed for 08-07-2024, being fit for acceleration. Notices be issued to the parties with direction to appear on the accelerated date already fixed, positively.

TCS Expenses  
Not Submitted  
Q  
5/7

8/07/2024

  
Registrar

Due to Public Holyday (1st Muharram mul Haram),  
Therefore the case is adjourned on next  
31/07/2024 date.

Reader note.

