(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICES APPEAL NO 2473/2023

Mr. Sher Ajam Khan, PST (BPS-12), GPS Quli Khel (Domel), District Bannu

.....Appellant

VS

Director (E&SE) Education Department Khyber Pakhtunkhwa Peshawar & others

.....Respondents

INDEX

S. No	Description of documents	Annexure	Page No.
1.	Para wise Comments		01-02
2.	Authority Letter		03
3.	Affidavit		04
4.	Services Tribunal Judgment Dated:19-08-2016	A	05-08
5.	Services Tribunal Judgment Dated:22-09-2023	B	09-12
6.			

MUHAMMAD TARIQ KHAN
DEO (MALE) BANNU

14-05-2024

S.B
Peshawar

X2

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICES APPEAL NO 2473/2023

Mr. Sher Ajam Khan, PST (BPS-12), GPS Quli Khel (Domel), District Bannu

.....Appellant

VS

Director (E&SE) Education Department Khyber Pakhtunkhwa Peshawar & others

.....Respondents

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS.

RESPECTFULLY SHEWETH:

That the respondents 1 & 2 submit as under:

PRELIMINARY OBJECTIONS:

1. That the present appeal of the appellant is not maintainable in its present form and the appellant has concealed the material facts from this honorable Tribunal and hence his appeal is liable to be dismissed.
2. That the present Appeal of the Appellant is not maintainable in its present form.
3. That the Appellant has filed the instant Appeal to waste the precious time of this Honorable Services Tribunal.
4. That the case of the Appellant is devoid of merit and having no legal force hence liable to set aside.
5. That the appeal of the appellant is bad for non-joinder and miss-joinder.
6. That the instant appeal is barred by law & limitation and hence liable to set aside.

ON FACTS:

1. That the Para 1 on facts is related to the official record of this office. Anyhow the appellant was appointed as PST (PTC BPS-7).
2. That Para 2 is related to the official record of this office.
3. That Para 3 is related to the appellant personal assertion about his performance of duty and his service history. Moreover he himself admitted that he was nominated in the FIR, and remained absconder till 2016 and absent from duty till 2019. Hence he did not claim any seniority and did not challenge any seniority list which has been issued from time to time by this office on the basis of seniority cum fitness.
4. That Para 4 is incorrect and denied as the appellant has never approached to this office for promotion and never alleged any sonority list which has been issued from time to time by this office and the appellant did not submit any appeal to this department as he was absconder flatly accepted by him in Para-3 of his appeal and as per section-4 of 1973 civil servant act and on the same

point this Honorable Services Tribunal has dismissed such appeals which did not fall within the section-4 of the act. (Annex-A)

5. That Para 5 is related to the official record, anyhow the appellant himself failed to appear before the pay fixation party as he remained absconder and there was his service gap, and for the period for which the appellant did not perform his duty cannot claim benefits as it was held by this Honorable Tribunal.(Annex –B)
6. That Para 6 is incorrect and denied, as the appellant never submitted any appeal to this office.
7. That Para No 7 is related to the appellant and his counsel.

GROUNDS

A. That Para A on ground is incorrect and denied, and Para 4 and 5 on facts is referred as ready reference.
B. That Para B on ground is incorrect and denied, as this department has never violated any article of constitution of Islamic Republic of Pakistan, but in fact the appellant has filed this appeal in violation of section-4 of the services Tribunal act 1973 as stated in the preceding paras.
C. That Para C on ground is incorrect and denied, as the appellant case is different from that of others because the appellant remained absconder and did not perform his duty for almost 18 years.
D. That Para D on ground is related to the personal, legal approach of the appellant and his counsel but in fact the case is badly time barred as per section-4 of 1973 civil servant act.
E. That Para E on ground is related to the constitutional and legal approach of the appellant and his counsel, this department is never to discriminate against anyone but in fact it is to follow law, rules and policy and the present appellant is having a gap of service as he did not performed any duty for almost 18 years as stated in the preceding paras.
F. That Para F on ground is related to the appellant and his counsel, anyhow the respondents may be allowed for additional arguments at the time of hearing.

PRAYER:

In view of the above made submissions it is requested that this Honorable Services Tribunal may very graciously be please to dismiss the instant appeal with heavy cost.

SAMINA ALTAF
DIRECTOR E&SE KP PESHAWAR
Respondent No.1

MUHAMMAD TARIQ KHAN
DISTRICT EDUCATION OFFICER
(MALE) BANNU
Respondent No.2

(03) (6)

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) BANNU

AUTHORITY

Certified that Mr. Bakhmal Jan ADEO Litigation of this Office is hereby authorized to submit this Para wise comments on behalf of under signed in connection with the Case titled as Mr. Sher Ajam Khan Vs Govt; in Services Appeal No 2473/2023.

DISTRICT EDUCATION OFFICER
(MALE) BANNU

04

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICES APPEAL NO 2473/2023

Mr. Sher Ajam Khan, PST (BPS-12), GPS Quli Khel (Domel), District Bannu

.....Appellant

VS

Director (E&SE) Education Department Khyber Pakhtunkhwa Peshawar & others

.....Respondents

AFFIDAVIT

I Mr. Muhammad Tariq Khan do here by Certify that all the contents of these Para wise comments are true & correct to the best of my knowledge and nothing has been concealed from this Honorable Services Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed exparte nor their defense has been struck off.

MUHAMMAD TARIQ KHAN
DEO (MALE) BANNU
CNIC:

ATTESTED
Rashid
NOTARY PUBLIC
Pak

13/5/2024

Annex-A

Appeal No. 191 /2012

Farhat Ullah, AT, Govt. High School Koti Sadat District Bannu

..... Appellant

Versus

1. Government of KPK through Secretary Elementary and Secondary Education Peshawar.
2. Director Elementary and Secondary Education Peshawar.
3. Executive District officer, District Bannu.
4. District co-ordination officer, District Bannu.
5. Departmental selection committee, Elementary and Secondary Education Peshawar.
6. Amir Sabir Shah S/O Amir Yousaf Shah, AT, Govt. High School Jan killa, Tehsil and District Bannu.
7. Asad Ullah Khan s/O Shams-ul-Islam, AT, Govt High School Bezin Khel, Tehsil and district Bannu.
8. Nisar Khan S/O Jehan Sardar, AT, Govt High School, ~~Jani Khel~~, Tehsil and district Bannu.
9. Muhammad Umar S/O Sher Bahadar, AT, Govt High School Bhangi Khan Khojeri, Tehsil and district Bannu.

..... Respondents

Appeal under section 4 of KPK Service Tribunal Act, 1974 whereby the appellant who possessed high merit As compared to respondents No.6 to 9 as revealed from merit list at annexure 'F' was ignored from appointment on Arabic teacher post and respondents No. 6 to 9 were appointed vide annexure 'A' and the appellant was also deprived from seniority over them.

Respectfully Shewith:

The appellant respectfully submits as under:

1. That the respondent No.2 had advertised Arabic teacher Posts and others vide annexure 'B'.
2. That the appellant with the following qualification had applied for appointment on Arabic post.
   a. MA Islamiyat

Not entitled for back benefits decision/Judgment.

Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO. 191/2012

(Farhat Ullah-vs- Govt: of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others)

19.08.2016

JUDGMENT

PIR BAKHSH SHAH, MEMBER:

Counsel for the appellant (Mr. Aslam Khan Khattak, Advocate) and Mr. Usman Ghani, Senior GP for official respondents present.

2. The following prayer has been made by the appellant in this appeal as:-

> "It is therefore, prayed that on acceptance of appeal, the official respondents may be directed to issue the appointment order of appellant on at post from 05.04.1999 with all back benefits and also he may be declared senior to respondents No.6 to 9 in the seniority list of Arabic Teachers to meet the ends of justice".

3. The facts narrated by learned counsel for the appellant were that some posts of the Arabic Teacher were advertized by the official respondents as a result whereof appellant and private respondents No.6 to 9 applied for the same. That in the merit list the appellant secured higher

position than the private respondents but objection was raised on testimonial of the appellant for which reason he was not appointed. That finally, proved to be an invalid objection. That private respondents were appointed in the year 1999 whereas the appellant was finally appointed in the year 2011 on the order of the Hon'able High Court and thus the appellant suffered financially as well as in seniority, hence this appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

4. Arguments heard and record perused.

5. A careful perusal of the record reveals that the appellant, to seek the relief, went before the learned Civil Court which round of litigation culminated into the judgment dated 02.11.2010 of the Hon'able High Court, D.I Khan Bench vide which the respondents were directed to appoint the petitioner against the vacant post. Consequently, the appellant was appointed vide order dated 24.02.2011. The above situation clearly shows that at the relevant time the appellant was not a Civil Servant therefore, his prayer on this count cannot be treated to be from a Civil Servant and competent. Since the appellant was not appointed in the year 1999, therefore, the question of his seniority would also not arise. The Tribunal is of the considered view that there is no merit in this appeal, the same is, therefore, dismissed. Parties are left to bear their own cost. File be consigned to the record room.

Announced
19.08.2016

Sd/- Pir Bakhsh Shah
Member

Sd/- M. Amin Khan,
Member

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

IN THE COURT OF SULTAN HUSSAIN,
CIVIL JUDGE-V, BANNU.

Civil Suit No: 201/1
Date of Institution: 28-3-2014
Date of Decision: 28-3-2017

1. Mumtaz Khan S/O Maqsood Jan
2. Zareen Khan Vs Gul Marjan
R/O Kakki, Tehsil & District, Bannu
..... (PLAINTIFFS)

854/17

VERSUS

Provincial Government, Secretary Education through Agent Government Pleader, Bannu etc.
..... (DEFENDANTS)

SUIT FOR DECLARATION AND INJUNCTION.

JUDGMENT
28-3-2017

Mumtaz Khan and Zareen Khan are the holders of PST certificates, passed from Allama Iqbal Open University Islamabad in the year 1996. In 1999 vacant posts of PST were advertised. The government policy for recruitment at that time was that 25% was to be filled on district-wise basis and 75% on the basis of union council/baleh-wise. At the same time candidates who qualified their PTC from Government Elementary Colleges/Institutions were given preference over candidates having similar qualification from Allama Iqbal Open University Islamabad. It so happened that when the vacant posts were advertised in the year 1999,

Fresh vacancy shall be considered from the date of the decree.

ATTESTED
Copying Agency
Lower Court Bannu
29-6-17

28/3/2017

Annex-B

09

Service Appeal No. 214/2022 titled "Shaista Wali versus District Education Officer (Male) Primary, District Kohat and others" decided on 22.09.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Muhammad Akbar Khan, Member (Executive), Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MUHAMMAD AKBAR KHAN ... MEMBER (*Executive*)

Service Appeal No.214/2022

Date of presentation of Appeal.....22.02.2022
Date of Hearing.....22.09.2023
Date of Decision.....22.09.2023

Shaista Wali S/O Jamali Shah R/O Hsassan Band, Tehsil Lachi, District Kohat, Ex-PTC Teaacher, BPS-07, Posted at Government Primary School Maoob Banda, Mandoori-2, District Kohat.....*Appellant*

Versus

1. **District Education Officer Male, Primary,** District Kohat.
2. **Director Primary Education,** Khyber Pakhtunkhwa, Peshawar.
3. **Government of Khyber Pakhtunkhwa Peshawar through Secretary Education,** Civil Secretariat Peshawar.....(*Respondents*)

Present:
Mr. Gohar Ali Khweshgi, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney .....For respondents

.....

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER OF DISMISSAL DATED 22.12.2000 AND DISMISSAL OF DEPARTMENTAL APPEAL DATED 09.02.2002 ALONGWITH ALL BACK BENEFITS OF SERVICE OR ANY OTHER RELIEF WHICH DEEMS FIT IN THE INTEREST OF JUSTICE, PLEASE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case as narrated in the memo and grounds of appeal are that appellant was appointed

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

as PTC teacher vide appointment order dated 19.12.1994. While serving, an FIR was lodged against him that he had submitted fake & bogus certificate of PTC obtained on 25.01.1993 from Jamshoro University (Sindh). Resultantly, he was proceeded against and was dismissed from service vide order dated 22.12.1994. After requesting before different forums, the appellant filed departmental appeal on 21.12.2021 to the District Education Officer which was rejected, hence, the present service appeal.

02. 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.

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

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

05. From the record, it is evident that appellant was appointed as PTC vide order dated 19.12.1994. After scrutinizing the documents, the same were sent to the Jamshoro University for verification, which were found fake & bogus. As a result, the appellant was penalized and dismissed from service vide order dated 22.12.2000. Against the dismissal order, he preferred proper departmental on 21.12.2021 i.e. after a period of more than

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

twenty years. While Section-4 of the Service Tribunal Act, 1974 gives the period for filing departmental 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.*

Although, the appellant approached different forums for redressal of his grievance but the authority was requested after a lapse of twenty years. Therefore, the departmental appeal of the appellant is badly barred by time.

06. 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.

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

07. Having considered the matter from all angles in the light of material available on file, we do not find any merit in the instant service appeal which is hereby dismissed. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of September, 2023.*

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

"Mutazem Shah."

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 25/9/23
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