

06.02.2024

1. Junior to counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.
2. Junior to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 30.05.2024 before D.B. P.P given to the parties.

SCANNED  
Peshawar  
\*Kamranullah\*

(Muhammad Akbar Khan)  
Member (E)

(Rashida Bano)  
Member (J)

**ORDER**

30.05.20241 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Mr. Rahim Zad, ADEO, for respondents present.

2. For what has been discussed above, it is held that service appeal of the appellant was barred by time, therefore, the service appeal in hand stands dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

3. ***Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of May, 2024.***

(Fareeha Paul)  
Member (E)

(Rashida Bano)  
Member (J)

\*Kaleemullah


departmental appeal in the rules. Furthermore, from the first departmental appeal of the appellant it is clear that he had not performed duties after 2010 the relevant para is;

مودبانہ گزارش ہے۔ کہ میں گورنمنٹ سکول مڈل سکول سیروکیال کوہستان میں اپنی فرائض PET احسن طریقے سے بحیثیت انجام دے چکا ہوں۔

Which means that he had performed duties in the past but was not performing duties at the time of filing departmental appeal i.e. on 09.03.2011. So appellant absconded his work/duty place without obtaining proper leave and has not returned for the same. Therefore, he is not entitled for salaries.

11. For what has been discussed above, it is held that service appeal of the appellant was barred by time, therefore, the service appeal in hand stands dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

12. ***Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of May, 2024.***

  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)

attended/visited office of respondent in connection with handing/taking of under construction GHS School constructed through ERRRA and stopped official vehicle of DEO to pressurized him with the help of mob.

8. Appellant is aggrieved from stoppage of his salary which was stopped in year 2010 against which he filed departmental appeal which was not decided within statutory period of 90 days as required by Section-4 Khyber Pakhtunkhwa Service Tribunal Act, 1974, than appellant has been required to file service appeal in next thirty days but he filed instant service appeal on 07.01.2021, which is with considerable delay of 9 years and ten months. August Supreme Court of Pakistan in its judgment reported as 2011 SCMR 08 has held that question of limitation cannot be considered a technicality simpliciter as it has bearing on merit of the case.

9. It is well settled that law favours the diligent and not the indolent. The appellant remained indolent and did not agitate the matter before the departmental authority and the Service Tribunal within the period prescribed under the relevant law. This Tribunal can enter into merits of the case only, when the appeal is within time. Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation, its merits need not to be discussed.

10. Appellant was asked to produce the proof of his attendance after year 2008, but he failed to produce, which means that he had not performed duties since 2008. Filing of subsequent departmental appeals was of no help to the appellant, as he had not performed duties and there is no provision of second




4. Learned counsel for appellant argued that appellant has not been treated in accordance with law and rules. He further argued that act, omission and commission of respondents by way of depriving the appellant from his legal right is illegal, unlawful, without lawful authority of no legal effect. He further argued that no departmental proceedings has been initiated against the appellant nor any inquiry has been held into the matter nor any final order has been passed against him, hence he is also entitled for pension and pensionary benefits.

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant remained absent from his lawful duty without prior permission/ leave from competent authority and was busy in his private job. He further contended that departmental appeal as well as service appeal of the appellant is barred by time, he requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant was appointed as PET vide order dated 05.04.1999 and was transferred to different Schools, was lastly posted at GMS Serto Kiyal where he was performing his duties but all of sudden his monthly salary was stopped in the year 2010. Appellant filed departmental appeal on 09.03.2011 which was not responded, after which appellant filed another application on 13.06.2015 and third on 30.09.2020.

7. Respondent in their reply categorically stated that appellant remained absent from year 2008 and his salary was stopped due to his absence.

 Respondents also mentioned that appellant now is contractor who

**“On acceptance of this service appeal, the respondents may graciously be directed to release and pay all the outstanding monthly salaries alongwith all other service benefits since the year, 2010 up till now and respondents are also directed to prepare and process the pension and pensionary documents of the appellant and to pay him his all dues in shape of monthly pension alongwith all gratuities/emoluments in lim sum as the appellant served the department for about 20 years without any further delay, reason justification. Any other relief deemed fit may also be graciously granted.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed against the vacant post of PET vide order dated 05.04.1999 and was posted at GMS Mazoo Pattan. He performed his duty with zeal and zest. He was lastly posted at GMS Serto Kyal, where the appellant regularly attended the school and performed his duty. In the year, 2010 monthly salary of the appellant was stopped. Feeling aggrieved, he filed departmental appeal, which was not responded, hence the present service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 514 /2021**

**BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)**

**Mr. Jehanzeb Khan, PET, Government Middle School, Serto Kiyal,  
Lower Kohistan.**

**... (Appellant)**

**VERSUS**

1. Accountant General, Khyber Pakhtunkhwa, Peshawar Cantt.
2. District Account Officer, District Lower Kohistan.
3. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
4. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
5. District Education Officer (M), Kohistan.

**... (Respondents)**

Mr. Muhammad Arif Jan  
Advocate

...

For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

...

For respondents

----

Date of Institution.....07.01.2021

Date of Hearing.....30.05.2024

Date of Decision.....30.05.2024

**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:

