

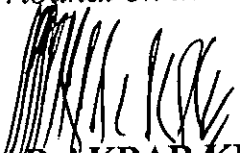
**ORDER**


15.07.2024 1

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Suleman Khan, Senior Instructor for the official respondents present and private respondent No.5 in person present.

2. Vide our detailed judgement of today placed on file, it is held that departmental appeal as well as service appeals are barred by time, hence dismissed 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 15<sup>th</sup> day of July, 2024.*


  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*M.Khan

11. For what has been discussed above, it is held that departmental appeal as well as service appeals are barred by time therefore the instant service appeal is not maintainable hence dismissed. Copy of this judgment be placed on file of connected service appeal. Costs shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of July, 2024.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*M.Khan

*service, therefore, can well be urged before the departmental authority in the first instance and then before the Service Tribunal and this Court, in view of bar contained in Article-212 of the Constitution of Islamic Republic of Pakistan, 1973, can't intervene in such like matter, thus, we don't feel persuaded to admit this writ petition to regular hearing, which would amount to an exercise in futility and wastage of Court's time. So, in view of the above discussion, the instant petition being without any substance, is hereby dismissed in limine."*

After it, appellant was required to approach his department by filing departmental appeal for antedation of his promotion from the date of eligibility i.e. 07.07.2015 and same was not decided within statutory period of 90 days was required to file service appeal within next 30 days as is provided by Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, but he remained silent and filed departmental appeal on 18.01.2023 after lapse of two years

9. 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 Anwar ul 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.

10. Appellants filed instant appeal on 22.06.2023, which were required to be filed within 30 days after expiry of 90 days i.e. 18.05.2023 with a delay of one month and seven days, which is barred by time. Reason for condonation of delay

given by the learned counsel for the appellant is not plausible.

Superintendent Jail vide order dated 07.07.2010. Appellant got promoted to the rank of Deputy Superintendent Jail (BPS-17) on Acting Charge Basis vide order dated 28.04.2015 as appellant had dearth of service-length of two months and nine days. Appellant completed his length of service for regular promotion to the post of Deputy Superintendent Jail (BPS-17) on 07.07.2015. It is significant to mention that during the intervening period, respondents No.3 to 5 were directly appointed against the rank of Deputy Superintendent vide order dated 09.10.2015. Appellant was regularly promoted to the rank of Deputy Superintendent Jail (BPS-17) on 09.02.2016 and thus due to the belated act on the part of respondents, the appellant lost his seniority to the private respondents NO.3 to 5 for no fault of his own.

8. Appellant seeks two fold relief from this Tribunal in appeal first his regular promotion to the post of Deputy Superintendent Jail (BPS-17) from 07.07.2015 when dearth in length of service was removed due to which was appointed/promoted on Acting Charge Basis for the same on 28.04.2015 and secondly, seniority based upon his promotion from respondents NO.3 to 5 who were directly recruited upon recommendation of Public Service Commission vide order dated 09.10.2015. Appellant after his regular promotions vide order dated 09.02.2016 filed Writ Petition bearing No.1133-P/2020 which was dismissed being not maintainable in view of bar contained in Article 212 of Constitution of Islamic Republic of Pakistan, 1973 with observation

*“Admittedly the petitioner is Government Servant and sought promotion against the post of Deputy Superintendent Jail w.e.f 07.07.2015 on regular basis. Since, in essence and substance, the matter in hand, being related to the terms and conditions of*



**the prescribed period/length of service i.e 07.07.2015 by placing the appellant senior to the respondents No. 3-5 being junior.”**

**Service Appeal No. 1405/2023 “Sahibzada Qaiser Vs. Prison”**

2. Through this single judgment we intend to disposed of instant service appeal as well as connected Service Appeal No.1405/2023 titled “Sahibzada Qaiser Vs. Prison as in both the appeals common questions of law and facts are involved.

3. Brief facts of the case are that appellant was appointed as Assistant Superintendent Jail vide order dated 16.02.1992. He was promoted to the post of Senior Superintendent Jail in the year 2010. He was further promoted to the rank of Deputy Superintendent Jail (BPS-17) on acting charge basis vide order dated 24.08.2015.

4. 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.

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

6. 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).

7. Perusal of record reveals that appellant was initially appointed as Assistant Superintendent Jail on 16.02.1992. Later on, promoted as Senior



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1404/2023**

**BEFORE: MRS. RASHIDA BANO ... MEMBER (J)**  
**MR MUHAMMAD AKBAR KHAN ... MEMBER (E)**

Sahibzada Muhammad Qaisar, S/O Sahibzada Muhammad Faridoon, R/O Village Kota Tehsil & District Swabi Prsently, AIG Prison, RPO, Peshawar. .... (*Appellant*)

**VERSUS**

1. The Inspector of Prisons Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa Home & Tribal Affairs Works Department, Civil Secretariat, Peshawar.
3. Mr. Umair Khan, AIG/Superintendents District Jail/Deputy Commandant.
4. Mr. Amin Shoib, AIG/Superintendents District Jail/Deputy Commandant.
5. Mr. Najam Hussain Abbasi, AIG/Superintendents District Jail/Deputy Commandant. ....(*Respondents*)

Khalid Rehman  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

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Date of Institution.....22.06.2023  
Date of Hearing.....15.07.2024  
Date of Decision.....15.07.2024

**CONSOLIDATED 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:

**“That on acceptance of the instant appeal, the impugned notification/seniority list dated 17.05.2021 communicated to the appellant on 18.01.2023 may graciously be modified and appellant be promoted to the post of Deputy Superintendent Jail BPS-17 on regular basis from the date of completion of**

