

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.15300/2020

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

**Sajid Ullah, Ex-Constable No. 5577/FRP Kohat Range Kohat, R/O
Village Totakan District Karak.**

.... (Appellant)

VERSUS

1. Inspector General of Police, kp, Peshawar.
2. Deputy Commandant FRP, Peshawar.
3. Superintendent of Police FRP Kohat Range, Kohat.

... (Respondents)

Zahoor Islam Khattak ... For appellant
Advocate

Muhammad Jan ... For respondents
District Attorney

Date of Institution.....14.10.2020
Date of Hearing.....12.09.2024
Date of Decision.....12.09.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of appeal, the two impugned order dated
19.02.2018 and 15.09.2020 may kindly be set aside and the**



appellant may be reinstated into service with all back benefits.”

2. Brief facts of the case are that appellant was inducted in Frontier Reserve Police vide order dated 08.04.2007 and consistently performed his duties satisfactorily, maintaining an unblemished record. Due to his mother's serious illness, the appellant sought and was granted permission to take leave, filing an application. He later applied for a second leave for her continued treatment, but departmental action was taken against him without prior notice. After his mother passed away, the appellant returned to duty but was dismissed from service on 19/02/2018. Feeling aggrieved, he filed departmental appeal on 30.10.2019, which was rejected on 15.09.2020, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned order dated 19.02.2018 has been given retrospective effect which is patently illegal order and cannot be given any effect to under the law. He submitted that no charge sheet, summary of allegations and show cause notice was served upon the appellant and appellant was condemned unheard. He further submitted that neither regular inquiry was conducted nor chance of personal



hearing was afforded to the appellant. He requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Additional Advocate General contended that appellant has been treated in accordance with law and order passed by respondents is legally justified. He further contended that on the allegations of willful absence the appellant was properly proceeded departmentally, as he was issued charge sheet alongwith summary of allegation and enquiry officer was nominated. The allegations of willful absence were fully established against the appellant in the inquiry proceedings and after fulfilment of all codal formalities major penalty of dismissal from service was awarded to the appellant. He submitted that departmental appeal of the appellant is barred by time, therefore, he requested that instant appeal might be dismissed with costs.

6. Perusal of record reveals that appellant was dismissed from service vide impugned order dated 19.02.2018 on the ground of absence from duty w.e.f 03.09.2017. Appellant was required to challenge the impugned order within 30 days from the date of its issuance in accordance with Section 4 of kp Service Tribunal Act, 1974 by filing of departmental appeal. 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

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later,] prefer an appeal of the Tribunal having jurisdiction in the matter.”

7. This case has to face the issue of limitation for the reason that he has filed departmental appeal at a belated stage i.e. beyond the period provided for filing departmental appeal before the appellate authority. The appellant had filed on 20.11.2019 after a considerable delay of one year and nine months and 19 days which is hopelessly barred by time. Therefore, the appeal in hand is not competent in view of the judgment of the Supreme Court of Pakistan in 2007 SCMR 513 titled “Muhammad Aslam Vs. WAPDA and others”, wherein, the Apex Court has held that:

“If departmental appeal was not filed within the statutory period, appeal before Service Tribunal would not be competent. Civil Servant was non-suited for non-filing of appeal within time, therefore, Supreme Court declined to interfere with the judgment passed by Service Tribunal. Leave to appeal was refused.”

8. For what has been discussed above, when departmental appeal of the appellant is time barred, service appeal would be incompetent being non-maintainable, hence dismissed. Costs shall follow the event. Consign.

9. *Pronounced in camp court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of September, 2024.*



(KALIM ARSHAD KHAN)
Chairman




(RASHIDA BANO)
Member (J)

ORDER

12.09.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed. Costs shall follow the event. Consign.
3. *Pronounced in camp court at Peshawar and given under our hands and seal of the Tribunal on this 12th day of September, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)