

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

1. Service Appeal No.5809/2020
Mr. Hidayat Ullah S/o Misal Khan R/o Village Marwatan Banda,
Tehsil Takht Nasrati, District Karak.
2. Service Appeal No. 5810/2020
Munawar Khan, SST (G) GHS Latember Khel, Karak
3. Service Appeal No. 5811/2020
Mehmood Ur Rehman, SST (Maths, Physics) GHS Jatta Ismail Khel
Karak & Others.

..... (*Appellants*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male) District Karak.

.... (*Respondents*)

Mr. Ashraf Ali Khattak
Advocate ... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General ... For respondents

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Date of Institution.....18.06.2020
Date of Hearing.....23.09.2024
Date of Decision.....23.09.2024

CONSOLIDATED JUDGMENT

RASHIDA BANO, MEMBER (J): Through this single judgment we intend to dispose of the three service appeals captioned above filed against the same impugned order dated 13.03.2019 as common question of law and facts are involved in them.

2. All the three appeals have been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of these appeals the order dated 13.03.2019 of the respondent No.3 may please be set aside to the extent that promotion to the appellants Hidayatullah and Mehmood ur Rehman may kindly be allowed w.e.f. 05.05.2016, while promotion to appellant Munawar Khan may be allowed w.e.f. 18.07.2017 respectively along with all kind of back benefits instead of 13.03.2019.”

3. Brief facts of the cases are that the appellants Mr. Hidayat Ullah, Mr. Munawar Khan and Mehmood ur Rehman were appointed as Qari, T.T and PST respectively in Education Department. As per policy of 2014 of the Khyber Pakhtunkhwa Education Department, their names alongwith others were placed before the Departmental Promotion Committee for promotion to the post of SST. But they were not considered for promotion and their promotions were deferred till the verification of their B.Ed degrees through HEC, awarded to them by Al Khair University of AJK. They approached the quarter concerned against the same and later on, HEC verified the degrees of the appellants. The appellant Hidayat Ullah approached the Peshawar High Court, Bannu Bench, in W.P No.77/2018 which was decided on 19.09.2018. Then they were promoted to the post of SST vide notification dated 13.03.2019, but the same promotion was without seniority and back benefit/nor from the deferred date, they filed departmental appeals but not responded, hence the present service appeals.

4. On receipt of the appeals and its admission to full hearing, the respondents were summoned. Respondents put appearance but failed to file written reply, hence their right to file reply was struck off.

5. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.

6. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals, while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

7. The perusal of record reveals that appellants were appointed as Qari, T.T and PST respectively in Education Department. As per policy of 2014 of the Khyber Pakhtunkhwa Education Department, the Departmental Promotion Committee approved names of the appellants for promotion to the post of SST. The appellants were awarded B.Ed Degree by Al Khair University of AJK. They were deferred by the DPC being qualified from Al-Khair University. They approached the concerned authorities against the same and later on, HEC verified the degrees of the appellants. The appellant Mr. Hidayat Ullah approached the Peshawar High Court, Bannu Bench in W.P No.77/2018 which was decided on 19.09.2018. Then they were promoted to the post of SST vide notification dated 13.03.2019.

8. The record further reveals that impugned promotion notification was issued on 13.03.2019, while the appellants have filed departmental appeals on 13.03.2020 after considerable delay of one year. These appeals have to face the issue of limitation for the reason that the same have been filed at a belated stage beyond the period of 30 days provided for filing departmental



appeals\ before the appellate authority, which is mentioned in Section 3 of the Revised Appeal Rules 1986.

9. Therefore, the appeals 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."

10. Furthermore, Section-4 of the Service Tribunal Act, 1974 also 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."



11. For what has been discussed above, we are unison to dismiss all the three service appeals being barred by time, hence, not maintainable in the eyes of law. Costs shall follow the events. Consign.

12. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 23rd day of September, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)


*M.KHAN

ORDER

23.09.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General, for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being barred by time. Costs shall follow the events. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 23rd day of September, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.KHAN