

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 14550/2020

Date of presentation of Appeal.....20.11.2020
Date of Hearing.....19.09.2024
Date of Decision.....20.09.2024

Laiq ZamanS/o Aziz Khan (Ex-Head Constable No. 591, Police Department, KPK) R/o Village Rashakai, PO Tarakai, Tehsil Razzar, District Swabi.....**Appellant**

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Police Lines, Peshawar.
2. Regional Police Officer (RPO), District Mardan.
3. District Police Officer (DPO), DPO Headquarters, District Swabi.
4. Deputy Superintendent of Police (DSP), Razzar, District Swabi.
.....(**Respondents**)

Present:

Mr. Asad Zeb Khan, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL):The brief facts of the case, as per memorandum of the appeal, are that the appellant was appointed as Constable on July 1, 1991, in the Police Department in District Swabi and subsequently promoted to Head Constable on February 11, 2008. On March 6, 2013, he was nominated in FIR No. 76 under sections 302/324/34 of the PPC by the local police of PS Sabzi Mandi, Islamabad. Following this, departmental inquiry was conducted wherein he was found innocent by the Deputy Superintendent of Police, Razzar,

Swabi, who recommended his exoneration. However, Respondent No. 3 (District Police Officer (DPO), DPO Headquarters, District Swabi) dismissed the services of the appellant vide order dated February 9, 2015. Post-acquittal after the trial in the said criminal case, the departmental appeal of the appellant for reinstatement was rejected by Respondent No. 2 (Regional Police Officer (RPO), District Mardan) on November 5, 2020, prompting this service appeal.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that on March 6, 2013, the appellant was wrongly implicated in FIR No. 76 under sections 302, 324, 34 of the PPC by the Sabzi Mandi police, Islamabad and that this inclusion appears malevolent and lacking a factual basis. He next contended that the departmental inquiry conducted by Deputy Superintendent of Police, Razzar, Swabi (respondent No. 4), concluded in favor of the appellant's innocence, recommending his exoneration, however, respondent No. 3 disregarded these findings without justification. He further contended that the appellant was dismissed from service on February 9, 2015, based on allegations from which he was later acquitted by the Additional Sessions Judge-IV, Islamabad, on September 25, 2020, therefore, acquittal of the appellant from all charges legally nullifies any justification for his dismissal. He also contended that after the acquittal, the appellant submitted departmental appeal on September 28, 2020, which was rejected on November 5, 2020, by the respondent No. 2, which disregarded the judicial verdict of acquittal and perpetuated an initial unjust decision. He next argued that the dismissal of the


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appellant disregarded the procedures outlined in the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1973 as well as the Police Rules, therefore, dismissal order of the appellant is procedurally flawed and legally unsound. He further argued that the principle that no person should be condemned unheard was violated and thus the dismissal order of the appellant occurred without a fair hearing post-acquittal, violating principles of natural justice and procedural fairness. He also argued that the actions of the respondents contravene Articles 4 and 5 of the Constitution of the Islamic Republic of Pakistan, 1973, which ensure the right to be treated in accordance with the law and equal protection under the law. Learned counsel for the appellant also stated that the appellant was acquitted in the concerned criminal case on 25.09.2020, therefore, after his acquittal he filed departmental appeal on 28.09.2020, which is well within time as per reported judgment PLD 2010 Supreme Court 695. In the last, he argued that the impugned orders dated February 9, 2015, and November 5, 2020, may be set aside by declaring them unlawful and restoring the appellant to his position along with all back benefits.

4. Conversely, the learned Deputy District Attorney for the respondents contended that the departmental proceedings were initiated against the appellant due to his involvement in a criminal case and a proper departmental inquiry was also conducted in accordance with established legal protocols. He next contended that the involvement of the appellant in criminal activities provided sufficient grounds for departmental scrutiny, ensuring accountability within the service. He further contended that the inquiry was appropriately held in abeyance until the resolution of

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the criminal case, which demonstrates the respondents' adherence to procedural fairness. He also contended that the situation changed when the complainant party raised concerns regarding the alleged absconding of the appellant from the court, despite clear directives from the Hon'ble Peshawar High Court in the transit bail order dated April 17, 2014. He next argued that the criminal and departmental proceedings can lawfully run concurrently, therefore, the acquittal of the appellant in the criminal proceedings was predicated not on a determination of merit, but rather on a compromise reached between the parties involved. He further argued that the appellant was dismissed from service vide order dated 09.02.2015 and accordingly, the appellant was required to file a departmental appeal within the next 30 days, however, he filed departmental appeal on 28.09.2020, which is significantly barred by time. Lastly, he argued that as the departmental appeal of the appellant is badly barred by time, therefore, the appeal in hand is liable to be dismissed on this ground alone.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the case file reveals that the appellant, while posted to Police Lines, Swabi, was involved in a criminal case registered through FIR No. 76 dated 06/03/2013, under Sections 302/34 PPC, at Police Station Sabzi Mandi, Islamabad. Consequently, the appellant was placed under suspension and a charge sheet along with a summary of allegations was prepared against him. DSP H.Qrs Swabi was appointed as the Inquiry Officer to conduct a departmental inquiry. The Inquiry Officer submitted his findings, however, the decision was ordered to be kept pending until

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the verdict of trial court. During the pendency of the inquiry, the appellant secured transit bail from the Honorable Peshawar High Court on 17/04/2014, with an obligation to appear in the court at Islamabad. Following this development, he was reinstated to perform his duties. However, a complaint was subsequently lodged by the complainant party of the said criminal case against the appellant, alleging that he had absconded from court proceedings. In response to this, a final show cause notice was issued to the appellant. The matter was forwarded to DSP Razzar for further inquiry and report. The appellant submitted a reply to the final show cause notice, which was reviewed and found unsatisfactory. An opportunity of personal hearing was provided to the appellant but he failed to appear and went into hiding. Subsequently, a report from DSP Razzar confirmed that the appellant had not attended court and was indeed absconding. In light of the gross misconduct, failure to comply with court proceedings and evasion of due process, the appellant was subjected to major punishment of dismissal from service vide order dated 09.02.2015. The appellant was required to have filed departmental appeal within thirty (30) days of the dismissal, however, the record reflects that the appellant filed the departmental appeal on 28.09.2020. This action was taken more than five (5) years after the initial order, constituting a significant delay that rendered the appeal severely time-barred. Furthermore, the appellant has not filed any application for condonation of delay, which is a prerequisite for any such late submission. It is pertinent to highlight the established precedents as noted in the Supreme Court of Pakistan's judgment reported in 2011 SCMR 08, where it was articulated that the question of limitation is not merely a

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technicality but holds significant relevance, impacting the merit of the case. The court emphasizes that an appeal that is time-barred before the appropriate appellate authority must also be considered incompetent when brought before any Tribunal. We acknowledge the rulings set forth in 2007 SCMR 513, 2006 SCMR 453, and PLD 1990 S.C 951, reinforcing the principle that the merits of a time-barred appeal need not be considered. Additionally, reference is made to the judgment cited in 1987 SCMR 92, stating that where an appeal is to be dismissed solely based on its limitation, a detailed discussion of its merits is unnecessary.

7. As regards PLD 2010 Supreme Court 695, presented by the learned counsel for the appellant, the appellant in that case was in custody and filed the departmental appeal within three weeks after being released from jail. However, in the instant appeal, the situation differs—the appellant was an absconder. Therefore, the context in which the departmental appeal was filed differs significantly from the referenced case, which affects the applicability of PLD 2010 Supreme Court 695 to the present appeal.

8. Furthermore, Larger Bench of this Tribunal in its recent judgment dated 18.07.2024 in Service Appeal No. 7494/2021 has held as below:-


12. The departmental appeal of the appellant was barred by time as he did not file the same during the period of absconson, nor moved any application for leave or for that matter, to inform his superior therefore, the appeal in hand is not maintainable in view of the 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."


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9. The issue addressed by the Larger Bench of this Tribunal on July 18, 2024, highlighted that the appeal was filed beyond the prescribed time frame, as the appellant failed to submit it during his period of unauthorized absence (absconsion). Moreover, the appellant did not apply for leave or inform his superiors during this time, which affects the admissibility of the appeal. Therefore, the appeal at hand is not maintainable as it is barred by time.

10. In light of the facts and legal precedents presented, we find that the departmental appeal of the appellant is time-barred, therefore, the appeal in hand is hereby dismissed being not maintainable on the ground of limitation. Parties are left to bear their own costs. File be consigned to the record room.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 20th day of September, 2024.*



AURANGZEB KHATTAK
Member (Judicial)



FAREEHA PAUL
Member (Executive)

19th Sept, 2024

Appellant alongwith his counsel present. Mr. Naeem, S.I (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Arguments heard. To come up for order on 20.09.2024 before the D.B. Parcha Peshi given to the parties.



(Farzana Paul)
Member (Executive)

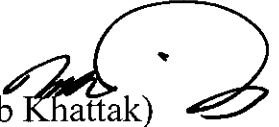

(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

ORDER
20th Sept, 2024

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, we find that the departmental appeal of the appellant is time-barred, therefore, the appeal in hand is hereby dismissed being not maintainable on the ground of limitation. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 20th day of September, 2024.*


(Farzana Paul)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial) 20th Sept 2024

Naeem Amin