

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.940/2022

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

**Arshad UI Haq S/O Kimya Gul, Naib Qasid Office of the Assistant Director,
Local Government & Rural Development Department Karak.**
... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Local Government & Rural Development Department, Peshawar.
2. Director General, Local Government & Rural Development Department, Peshawar.
3. Assistant Director, Local Government & Rural Development Department Karak. ... (Respondents)

Mr. Syed Roman Shah
Advocate

... For appellant

Mr. Naseer Uddin Shah
Assistant Advocate General

... For respondents

Date of Institution.....31.05.2022
Date of Hearing.....23.09.2024
Date of Decision.....23.09.2024

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:

“On acceptance of instant service appeal, the action of respondent No.3 for stopping of the salary of appellant may please be declare illegal, without lawful authority, without



any justification and against the settle principle of service law and thus liable to be set aside and the appellant is thus entitled for all his unpaid salaries since January 2019. Further it is requested that if any adverse order passed at the back of appellant may also be set aside as the same has never been communicated to the appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Naib Qasid vide order dated 29.12.2017 in Village Council Mardan Khel, Tehsil Banda Daud Shah District Karak. The appellant was performing his duty was drawing his salary till December 2018 but all of a sudden his salary was stopped in the month of January 2019. Feeling aggrieved he filed departmental appeal on 21.03.2022, which was not responded to, hence the instant service appeal.

3. 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.

4. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was appointed as Naib Qasid vide order dated 29.12.2017 in Village Council Mardan Khel, Tehsil Banda



Daud Shah District Karak. The appellant was performing his duty was drawing his salary till December 2018 but all of a sudden his salary was stopped in the month of January 2019. Feeling aggrieved he filed departmental appeal on 21.03.2022,

7. Appellant was required to file departmental appeal within 30 days from the date of issuance of impugned order in accordance with Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, which is reproduced below:

“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, prefer an appeal of the appeal having jurisdiction in the matter.”


8. 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 departmental appeal on 10.07.2021 after a considerable delay of 3 years, six months and 13 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.”



9. 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.


10. *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)

ORDER
23.09.2024

1. Learned counsel for the appellant present. Mr. Naseer Uddin Shah, Assistant Advocate General for the respondents present.
2. Vide our detailed judgment of today placed on file, 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.
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)