

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.938/2022

BEFORE: MRS. RASHIDA BANO ... **MEMBER (J)**
MIIS FAREEHA PAUL **MEMBER (E)**

Mr. Amir Muhammad, Constable No. 1513, Police Line Mardan.
 (*Appellant*)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer Mardan Region, Mardan.
3. District Police Officer, District Mardan.

... (*Respondents*)

Mir Zaman Safi ... For appellant
 Advocate

Naseer Uddin Shah ... For respondents
 Assistant Advocate General

 Date of Institution.....22.06.2022
 Date of Hearing.....18.09.2024
 Date of Decision.....18.09.2024

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 this appeal, the impugned orders dated 22.09.2007 and 07.06.2022 may very kindly be set aside and the respondents please be directed to restore/release the annual increments of the appellant. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.”



2. Brief facts of the case are that appellant was inducted as Constable in the respondent department; that while posted at Police Line Mardan, mother of the appellant became seriously ill and for her treatment and care he absented himself from lawful duty. On the basis of alleged absence, departmental proceedings were initiated against him, and after fulfilment of all codal formalities, minor penalty of forfeiture of two annual increments with accumulative effect was awarded vide impugned order dated 22.09.2007. Feeling aggrieved, he filed departmental appeal, which was rejected vide order dated 07.06.2022, hence the present service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and submitted reply.

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 orders.

6. Perusal of record reveals that minor penalty of withholding of increments was imposed upon the appellant vide impugned order dated 22.09.2007 on the ground of absence from duty. Appellant was required to challenge the impugned order within 30 days from the date of its issuance in accordance with Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 by filing departmental appeal. The Section 4 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.”

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 departmental appeal on 12.04.2022 after a considerable delay of fourteen years and six months 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 open court at Peshawar and given under our hands and seal of the Tribunal on this 18th day of September, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER
18.09.2024

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 18th day of September, 2024.*


(FARZEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)