

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD.

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Service Appeal No. 6623/2021

Imshad Khan S/O Muhammad Irshad Khan resident of Village Bakhi
(Kokotri) Tehsil and District Haripur, Ex-Constable No. 585 District Police
Haripur.....(Appellant)

Versus

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer/DIG Hazara Region at Abbottabad.
3. District Police Officer, Haripur. (Respondents)

Mr. Allah Yar Khan Tareen,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

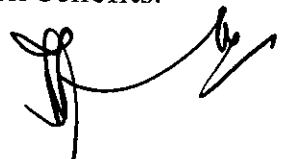
Date of Institution.....21.06.2021

Date of Hearing.....25.09.2024

Date of Decision..... 25.09.2024

JUDGEMENT

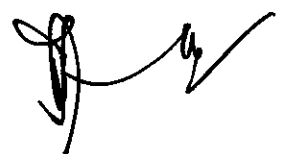
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 29.09.2010 whereby the appellant was dismissed from service and against the order dated 07.06.2018 whereby his mercy petition was rejected. It has been prayed that on acceptance of the appeal, the impugned orders dated 29.09.2010 and 07.06.2018 might be set aside and the appellant be reinstated into service with all back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in the Police Department. He had rendered 04 years service in the department when in the year 2010, his mother fell seriously ill and being alone in the house, he had to take care of her. The fact was also brought into the notice of respondents through application by annexing relevant medical treatment record of his mother. The respondent No. 3 proceeded to initiate inquiry and a one-sided inquiry was conducted, at the end of which, the appellant was dismissed from service, vide order dated 29.09.2010. Feeling aggrieved, he filed departmental appeal before respondent No. 2 which was shelved without any proceedings. Consequently, he moved mercy petition before respondent No. 1, who, without affording proper opportunity of hearing to the appellant, dismissed the petition vide order dated 07.06.2018; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.


4. Arguments and record presented before us transpired that the appellant had been dismissed from service through an order dated 22.09.2010 against which he preferred departmental appeal in the month of May, 2018, which was rejected on 07.06.2018 and the instant service appeal was filed on 21.06.2021. Counsel for the appellant, when confronted with the question regarding delay in submission of departmental appeal in the




year 2018 against an order of 2010 and subsequent submission of service appeal in 2021, he could not provide any cogent reason for that delay. As the departmental appeal against the impugned order had not been preferred within the prescribed time and was dismissed as being time barred, therefore, the instant service appeal was not maintainable before the Tribunal. The august Supreme Court of Pakistan has clearly held that an appeal that was time barred before the proper/competent appellate authority must also be considered incompetent when it was brought before the Tribunal. Reliance is placed on the ruling set forth in 2007-SCMR-513, 2006-SCMR-453 and 2012-SCMR-195 which reinforce the principle that merit of a time barred appeal may not be considered. Reference is also made to the judgment cited as 1997-SCMR-92 wherein it has been stated that where an appeal is to be dismissed solely based on its limitation, a detailed discussion of its merit is not necessary.

05. In view of the above discussion, the appeal in hand is dismissed being time barred. Cost shall follow the event. Consign.

06. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 25th day of September, 2024.*


(FAREEHA PAUL)
Member (E)
(Camp Court, A/Abad)


(KALIM ARSHAD KHAN)
Chairman
(Camp Court, A/Abad)

SA 6623/21

25.09 2024

01. Allah Yar Khan Tareen, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 03 pages, the appeal in hand is dismissed being time-barred. Cost shall follow the event. Consign.

03. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 24th day of September, 2024.*



(FAREEHA PAUL)
Member (E)
Camp Court, A/Abad



(KALIM ARSHAD KHAN)
Chairman
Camp Court, A/Abad

Fazle Subhan PS