

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 7044/2021

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

**Mr. Shah Fahad Ex-Constable No.755 S/o Shamshad R/o Zaidi
Colony, Kundar Nowshera Kalan, Tehsil & District Nowshera.
.... (Appellants)**

VERSUS

1. District Police Officer, Nowshera.
2. Regional Police Officer, Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. Inspector General of Police, Khyber Pakhtunkhwa.
.... (Respondents)

Mr. Roeeda Khan
Advocate ... For appellant

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

Date of Institution.....14.07.2021
Date of Hearing.....24.09.2024
Date of Decision.....24.09.2024

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 this appeal both the impugned orders dated 14.07.2020 & 14.01.2021 may kindly be set aside and the appellant may kindly be reinstated in service alongwith all back benefits. Any other remedy which this august Tribunal deems fit that may also be onward granted in favor of appellant.”



2. Brief facts of the case are that the appellant has been appointed as Constable in Police Department, while posted at District Police Office Nowshera at computerized driving license (CDL) branch a false and fabricated cases in FIR No.397 dated 02.06.2020 U/S 302/324/34 PPC at Police Station Nowshera Kalan, was lodged against him in which the he was placed under suspension vide OB No.429 dated 03.06.2020 issued vide order dated 03.06.2020. The appellant moved BBA petition, which was confirmed on 21.12.2020 by the Court and thereafter he visited the respondent department on 22.12.2020 for joining his duties, where he came to know that he has been dismissed from service on 14.07.2020 without fulfilling the codal formalities and without providing opportunity of defense. Feeling aggrieved he filed departmental appeal against the dismissal order dated 14.07.2020, which was rejected on 14.01.2021, 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 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. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondent.

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. The perusal of the records reveals that the appellant was appointed as a Constable in the Police Department and while performing his duties in the computerized Driving License (CDL) Branch at the District Police Office in Nowshera, a case was registered against him under FIR No. 397 dated 02.06.2020, U/S 302, 324, and 34 of the Pakistan Penal Code at Police Station Nowshera Kalan. Consequently, the appellant was suspended as per Order Book No. 429 dated 03.06.2020. The appellant subsequently filed a Bail Before Arrest (BBA) application in the concerned court on 04.11.2020, which was confirmed by the Court on 21.12.2020. Upon visiting the respondent department on 22.12.2020 to resume his duties, he discovered that he had been dismissed from service on 14.07.2020.

7. The record further reveals that impugned order was issued on 14.07.2020, while the appellant has filed departmental appeal on 23.12.2020, which was filed after considerable delay of 6 months. The appeal has to face the issue of limitation for the reason that the same has been filed at a belated stage beyond the period of 30 days provided for filing departmental appeal before the appellate authority, which is mentioned in Section 3 of the Revised Appeal Rules 1986. It seems that after registration of the FIR, he has gone into hiding and was absconder.

8. Alongwith his appeal the appellant has also filed an application for condonation of delay however no plausible explanation has been put forth by him for the delay except the allegation that the impugned order is illegal and void. 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. 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.”

10. It is well-entrenched legal preposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwar ul Haq Vs. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC Vs. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan Vs. Khyber Zaman & Others reported in 2004 SCMR 1426.

11. For what has been discussed above, we are unison to dismiss the instant service appeal being barred by time, hence, not maintainable in the eyes of law and the same is dismissed accordingly. 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 24th day of September, 2024.*

(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.KHAN

ORDER

24.09.2024 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, hence, not maintainable in the eyes of law and the same is dismissed accordingly. 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 24th day of September, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.KHAN