

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 1373/2023**

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

**Mr. Shair Badshah S/o Sadar Nawaz Khan House No. 6553 Sabza Ali  
Androon Sard Chah Gate Mohallah Koche Khan, Peshawar.**

**.... (Appellants)**

**VERSUS**

1. The Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. The Secretary Finance Department, Civil Secretariat, Peshawar.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. The District Education Officer (Male) Torghar.

**.... (Respondents)**

Mr. Muhammad Anwar Khan  
Advocate`

... For appellant

Mr. Naseer ud Din Shah,  
Assistant Advocate General

... For respondents

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Date of Institution.....07.10.2022  
Date of Hearing.....27.09.2024  
Date of Decision.....27.09.2024

**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, it is humbly prayed that on the impugned order of stoppage of 17 months salaries and withheld of two increment may kindly be set aside and the appellant may please be allowed 17 months salaries as well as two increments**




**withheld by respondents, necessary entries in service book and correction of increase in monthly pension may be allowed. The appeal may very kindly be accepted in favor of the appellant against the respondents with cost.”**

2. Brief facts of the case are that the appellant was appointed as PST BPS-7 in the Education Department and later on, upgraded from BPS-7 to BPS-12. The appellant due to illness could not attend his duties at District Torghar and requested for sanction of leave but respondent No.4 stopped the salaries of the appellant for seventeen months and also withheld two increments. The respondent No.4 imposed double punishment just for his absentee which is unlawful and against the nature of justice. The appellant filed departmental but in vain, 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 contention of the appellant is that he was appointed as PST BPS-7 in the Education Department and later on, upgraded from BPS-7 to BPS-12 and allegedly due to illness, could not attend his duties at District Torghar and requested for sanction of leave, but respondent No.4 stopped the salaries of the appellant for seventeen months and also withheld two increments.

7. The appellant in the instant service appeal challenged/impugned order dated 07.01.2019 of stoppage of salaries with effect from 2013 to 2014 and withholding of two annual increments of year 2012 to 2013 w.e.f. 01.09.2012 to 31.12.2013. Appellant was required to challenge their order by filing departmental appeal within next 30 days in accordance with Section-4 of Khyber Pakhtunkhwa Service Tribunal, but no copy of the departmental appeal after passing of impugned order is annexed by the appellant, from which it could be established that when he filed it however his departmental appeal was rejected vide order dated 02.01.2018. Appellant was required to challenge appellate order dated 02.01.2018 within next 30 days by filing service appeal but he filed instant service appeal on 07.01.2022 in this Tribunal, after about four year which is badly time barred.

8. 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 27<sup>th</sup> day of September, 2024.*

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

\*M.KHAN

**ORDER**

- 27.09.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General alongwith Mr. Sher Shah, Superintendent and Mr. Hashmat Khan, Superintendent for 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 27<sup>th</sup> day of September, 2024.*

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

\*M.KHAN