

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
CAMP COURT, ABBOTTABAD.

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

Service Appeal No. 1656/2022

Muhammad Ayaz Khan S/O Namroz Khan R/O village Banda Bala Wali  
Gadari District Battagram. ....(Appellant)

Versus

1. Secretary Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
2. District Education Officer (Male) Battagram.
3. Director Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Mr. Kabirullah Khattak,  
Advocate ... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney ... For respondents

Date of Institution..... 22.11.2022

Date of Hearing.....26.09.2024

Date of Decision..... 26.09.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 26.03.2015, whereby the appellant was removed from service and against the order dated 05.07.2022, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned order dated 26.03.2015 and 05.07.2022 might be set aside and the appellant be reinstated into service with all back benefits of service.



02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as PST on 14.10.1997 in the respondent department. On 15.11.2011, he applied for leave with effect from 15.11.2011 to 30.09.2012 for construction of his house. On expiry of the said leave, the appellant visited the department on 27.09.2012, 12.06.2013 and 18.08.2014 for joining his duty and moved applications for his adjustment but no action was taken by the respondent department. On 20.05.2015, on his personal efforts, he came to know that he had been removed from service on 26.03.2015. On 18.06.2015, the appellant submitted a departmental appeal to respondent department for his reinstatement into service which was rejected on 05.07.2022, communicated to him on 25.10.2022; hence the instant service appeal.

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

04. Through the instant service appeal, the appellant has impugned before us the order dated 26.03.2015, whereby he was removed from service on the charge of willful absence. Under the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules 1986, the appellant was obligated to submit departmental appeal in proper form within 30 days from the receipt of impugned order dated 26.03.2015 but he preferred departmental appeal on 18.06.2015 which was time barred. Even if we assume that he received the impugned order at some belated stage, as stated by his learned counsel before us, and that his departmental appeal was within time, the appellant should



have preferred service appeal within thirty days, after the expiry of statutory period of ninety days, but he submitted the service appeal after more than 07 years. When asked to explain the reason for delay, learned counsel stated that his departmental appeal dated 18.06.2015 was forwarded for further process on 12.03.2022 but could not provide any documentary evidence in support of that argument, rather on the face of that departmental appeal, there was a diary number 1875 and date 19.06.2015 and it was forwarded by the SDEO to the District Education Officer (Battagram) on the same date. Against the impugned order, he preferred another appeal dated 28.02.2022 attached as annexure-E with the reply submitted by the respondents. When the appellant was confronted with that annexure, he admitted that he had submitted the same to the DEO (M) Battagram. Even after that, the service appeal had to be preferred within 30 days, after lapse of statutory period of 90 days, but he submitted the instant service appeal on 22.11.2022. His departmental appeal was rejected on 05.07.2022 on the ground of being time barred. As the departmental appeal against the impugned order had not been preferred within the prescribed time and was dismissed as being time barred, therefore, service appeal was not maintainable before this 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 might not be considered. Reference is also made to the judgment cited in 1997-SCMR-92



wherein it had been stated that where an appeal was to be dismissed solely based on its limitation, a detailed discussion of its merits was not necessary.

06. In view of the above discussion, the appeal in hand is dismissed being not maintainable. Cost shall follow the event. Consign.

07. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 26<sup>th</sup> day of September, 2024.*



(FAREEHA PAUL)  
Member(E)  
Camp Court Abbottabad




(KALIM ARSHAD KHAN)  
Chairman.  
Camp Court, Abbottabad

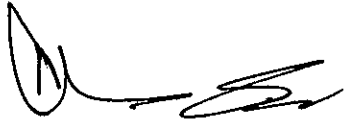
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26.09 2024 01. Mr. Kabirullah Khattak, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is dismissed being not maintainable. 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 26<sup>th</sup> day of September, 2024.*

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

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


\*Fazle Subhan PS\*


28<sup>th</sup> June 2024

1. Appellant in person present. Mr. Arshad Azam, Assistant Advocate General for the respondents present.
2. Former made a request for adjournment as his counsel was not available today. Adjourned. To come up for arguments on 26.09.2024 before D.B at Camp Court, Abbottabad. P.P given to the parties.

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\*Mutazem Shah \*

  
(Fareeha Paul)  
Member (E)  
Camp Court, Abbottabad

  
(Aurangzeb Khattak)  
Member (J)  
Camp Court, Abbottabad