

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 7843/2021

Date of presentation of Appeal.....06.12.2021
Date of Hearing.....23.09.2024
Date of Decision.....23.09.2024

Banaras Khan S/o Hunar Shah, Lab Attendant (BPS-03) Government Girls High School, Baghicha Dheri, Mardan.....**Appellant**

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary (E&SE), Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director (E&SE), Khyber Pakhtunkhwa, Peshawar.
4. The District Education Officer, District Mardan.
.....(**Respondents**)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): Facts of the case, as alleged by the appellant in his memorandum of appeal, are that he was appointed as a Chowkidar at the Government Girls Primary School Budh Serai, Mardan, on April 5, 2010, after meeting all necessary formalities. After his appointment, he underwent a medical examination on April 6, 2010, started duties of the Chowkidar and received regular salary payments until March 2012. While serving as a Chowkidar, he applied for the post of Lab Attendant and was appointed to said post at GGHS Baghicha Dheri, Mardan, on March 31, 2012. He

was medically examined and assumed the charge of new post on April 2, 2012. Upon taking charge as a Lab Attendant, a new service book was prepared and maintained. Appellant alleged that based on the West Pakistan Civil Services Pension Rules, 1963 and the Civil Service Regulations, he claimed entitlement to have his Chowkidar service counted toward his current service with all benefits. The appellant filed a departmental appeal for service credit, which was not responded, hence he approached this Tribunal by filing the instant appeal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by filing their respective written replies/comments.

3. The learned counsel for the appellant contended that Rule 2.3 of the West Pakistan Civil Services Pension Rules, 1963, provide a framework for pension calculations, which include all periods of qualifying service within the government sector. Therefore, by not recognizing the appellant's past service, the respondents disregarded the intent and purpose of such rules, effectively depriving the appellant rightful pension benefits. He next contended that the actions of the respondents contravened Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, as Article 4 guaranteed individuals the right to be dealt with according to law and Article 25 ensured equality before the law and equal protection by the law. Thus, by failing to count the appellant's previous service, the respondents had treated him differently from other civil servants who benefitted from such provisions, hence violating constitutional guarantees. He also contended that Rule 2.3 of the Civil Services Pension Rules and Article 371 A (i) of the Civil


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Service Regulations were framed to protect civil servants' rights and ensure fair treatment. Therefore, the respondents' action of not counting the appellant's previous service was against the law. He next argued that under Article 38(e) of the Constitution, the state was obligated to minimize income disparities among individuals, including civil servants. Thus, by not acknowledging the appellant's service as a Chowkidar, his income and pension benefits were unfairly reduced, escalating economic disparity in contradiction to constitutional mandates. He further argued that the service record of the appellant was continuous from his initial appointment as Chowkidar to his current post as Lab Attendant. Therefore, the uninterrupted nature of this service strengthened the appellant's claim to have his previous service counted toward his pension, as per the governing pension rules and regulations. Lastly, he argued that the appeal in hand should be accepted as prayed for.

4. On the other hand, the learned District Attorney for the respondents opposed the contentions of the learned counsel for the appellant and contended that the appellant applied for the Lab Attendant post without acquiring a No Objection Certificate (NOC) or proceeding through the appropriate departmental channels. He next contended that the appellant did not receive formal relieving from the concerned SDEO, ASDEO, or Head Mistress of the GGPS Budh Serai, Mardan, nor did he disclose pertinent documents like the old Service Book, Medical Certificate and details of previous service at the time of his new appointment. He further contended that the new service book was prepared because the appellant failed to disclose his previous service records, justifying the respondents' actions. He also contended that the appellant's previous service was

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considered a probation period and not regularized, hence not eligible for counting towards seniority or back benefits. He next argued that the appellant's service was not regularized as he was not entitled to count his previous service. He further argued that the respondents acted in accordance with the legal provisions governing the appointment and service regularization processes. He also contended that the appeal was significantly delayed as the appellant was appointed as a Lab Attendant on March 31, 2012, but filed the service appeal on December 6, 2021, which exceeded permissible time limits. Lastly, he argued that the appeal in hand should be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the case file reveals that the appellant was initially appointed as a Chowkidar at the Government Girls Primary School Budh Serai on April 5, 2010. Following his appointment, the appellant assumed the duty of the Chowkidar post, during which a service book was duly prepared for him and he received monthly salary until March 2012. While serving as Chowkidar, the appellant submitted an application for the post of Lab Attendant without obtaining any No Objection Certificate (NOC) from the relevant authorities. The administrative guidelines clearly mandated that all employees required to obtain an NOC prior to applying for positions outside of their current roles. The failure of the appellant to adhere to this requirement suggested a disregard for the established protocol necessary for such transitions. Moreover, it was found that the appellant did not submit a formal request or application through the appropriate hierarchical channels. This

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disregard for the proper procedures underscored the importance of hierarchy and protocol in public service appointments, which are designed to maintain order and accountability within government positions. Further scrutiny revealed that the appellant was not formally relieved from his duties as Chowkidar by the Sub-Divisional Education Officer (SDEO), the Assistant Sub-Divisional Education Officer (ASDEO) or the Head Mistress, prior to his application for the new post. The absence of a formal relieving order represented a significant breach of established procedures governing transitions from one role to another. This failure to comply with the established protocols not only invalidated the appellant's claim for service continuity but also violated the integrity of the transition processes prescribed for government employees. Furthermore, the appellant did not disclose his previous service and status to higher authorities when applying for the Lab Attendant post. This omission raised serious concerns regarding departmental ethics. Public service employees are expected to uphold a high standard of candor and transparency in their dealings. The appellant's failure to disclose pertinent information constituted not only a breach of trust but also a violation of the duty of candor, which is essential for maintaining the integrity of the recruitment process. Such violations undermine the integrity of the recruitment process and the established regulations that are designed to ensure fair and transparent hiring practices within government service. The integrity of these processes is critical for preserving public confidence in the administrative system and ensuring that employment opportunities are allocated fairly and based on merit.

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7. In light of the aforementioned findings, it is evident that the action of the appellant was not in compliance with the established procedural guidelines. The lack of a formal relieving order, failure to obtain an NOC and the omission of significant service history represented serious flaws that compromised not only the appellant's application but also the integrity of the public service protocols. Therefore, the appeal filed by the appellant is liable to be dismissed.

8. Moreover, the appellant was appointed as a Lab Attendant on March 31, 2012. On August 27, 2021, he filed a departmental appeal seeking the counting of his previous service rendered as a Chowkidar. However, this appeal was filed after a delay of more than 11 years, raising critical questions regarding its timeliness and adherence to legal procedural requirements. The considerable delay of over 11 years in filing the departmental appeal was notably significant and as such, characterized as being severely barred by time. According to established legal precedents, when a party seeks to appeal after the expiry of the prescribed period, they are required to file an application for condonation of delay. Such an application must provide a comprehensive explanation for the reasons leading to the delay and must present an itemized account of the reasons for each day's delay. The burden rested on the appellant to sufficiently satisfy that the delay was due to reasonable and justifiable causes, accompanied by credible evidence supporting this assertion. However, it was found that the appellant had not submitted the requisite application for the condonation of delay, which is a critical procedural requirement mandated by law. The absence of such an application indicated a failure to comply with


Amir S. 23/09/2024.


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necessary procedural steps, thereby undermining the integrity of the appeal process. It is a well-established principle of law that if an appeal is found to be time-barred before the appellate authority, any subsequent appeal presented before the Tribunal is inherently considered incompetent. The significance of adhering to procedural timelines has been reinforced through various judgments, which included precedents such as 2007 SCMR 513, 2012 SCMR 195, PLD 1990 S.C 951, and 2006 SCMR 453.

9. In light of the aforementioned findings, the appeal in hand is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of September, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


RASHIDA BANO
Member (Judicial)

Naem Amin

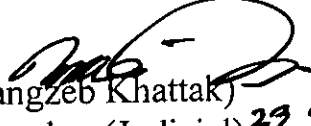
ORDER

23rd Sept, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Sajid, ADEO alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 23rd day of September, 2024.*



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak)
Member (Judicial)

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