

SA 1132/23

07.10.2024 01. Mr. Noor Muhammad Khattak Advocate for the appellant present. Mr. Muhammad Jan, 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 time barred and not maintainable. Cost shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 07th day of October, 2024.*


(FARZEHA PAUL)
Member (E)



(KALIM ARSHAD KHAN)
Chairman

Fazle Subhan PS

not provide any cogent reason for the delay. It was noted that the departmental appeal had to be preferred somewhere in the month of November, 2022 but it was preferred on 17.02.2023 which was barred by time. The same was rejected by the competent authority on the ground of being devoid of merit as well as being barred by time. When the departmental appeal was barred by time, the service appeal before the Tribunal was not maintainable. 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.

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

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 07th day of October, 2024.*


(FAREEHA PAUL)
Member(E)


(KALIM ARSHAD KHAN)
Chairman

conducted into the matter and no right of personal hearing was afforded to him before he was dismissed. He requested that the appeal might be accepted as prayed for.

05. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the criminal proceedings and departmental proceedings were two separate entities and both could run side by side. Charge sheet and statement of allegations had been served upon the appellant which was evident from the report of enquiry conducted into the matter. The appellant appeared before the Enquiry Officer and recorded his statement but he failed to prove his innocence and after fulfilment of all the codal formalities he was dismissed from service. He requested that the appeal might be dismissed.

05. Arguments and record presented before us transpired that the appellant was dismissed from service vide order dated 31.12.2020 on the basis of his involvement in a criminal case vide FIR No. 274 dated 26.10.2020 u/s 420/468/471 PPC P.S Khanmai. He was acquitted by the learned SCJ (Judicial)/Judicial Magistrate Charsadda vide order dated 20.09.2022. Copy of the order was attached at page 6 to 8 of the appeal which showed that the same was obtained by the appellant on 26.10.2022 but he preferred departmental appeal after his acquittal against the order of his dismissal on 17.02.2023. When confronted that despite the fact that the appellant had acquired a copy of judgment on 26.10.2022, and the departmental appeal had to be preferred immediately after receipt of that judgment, why that appeal was preferred at such a belated stage, learned counsel for the appellant could



02. Brief facts, as given in the memorandum of appeal, are that the appellant, while performing his duty in the respondent department, was implicated in a criminal case vide FIR No. 274 dated 26.10.2020 under section 420/468/472 PPC at Police Station Charsadda. He was issued charge sheet on the charge of absence. Learned Judicial Magistrate Charsadda, vide order/judgment dated 20.09.2022 acquitted the appellant from all the charges levelled against him. After acquittal from the competent court of law when the appellant approached the concerned quarter for joining his duty, he was handed over the impugned order dated 31.12.2020, whereby he was dismissed from service. Feeling aggrieved, he preferred departmental appeal which was rejected vide order dated 30.03.2023 communicated on 03.04.2023; hence the instant service appeal.

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

04. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were against the law, facts, norms of natural justice and material on record. The appellant was not treated in accordance with law and rules on the subject and the respondents violated Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan. He argued that when the appellant was acquitted by the competent court of law from all the charges, there was no plausible ground or justification to proceed and punish him on the same charges. He further argued that no charge sheet and statement of allegations was served upon the appellant nor proper inquiry was



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

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

Service Appeal No. 1132/2023

Mr. Mohsin, Ex-Constable No. 1249, DFC P.S Sardheri, Charsadda.
.....(*Appellant*)

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan Region at Mardan.
3. District Police Officer, District Charsadda.
..... (*Respondents*)

Mr. Noor Muhammad Khattak,
Advocate ... For appellant

Mr. Muhammad Jan,
District Attorney ... For respondents

Date of Institution.....18.05.2023

Date of Hearing.....07.10.2024

Date of Decision..... 07.10.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal has been instituted by the appellant under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 31.12.2020, whereby he was dismissed from service and against the order dated 30.03.2023, whereby his departmental appeal was regretted. It has been prayed that on acceptance of the appeal, the impugned orders dated 31.12.2020 and 30.03.2023 might be set aside and the appellant be reinstated into service with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

