

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 14227/2020**

**BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN**  
**MRS. RASHIDA BANO ... MEMBER (J)**

**Mr. Suleman S/o Ghulam Rasool R/o Mohallah Ramizai Village,  
Sufaid Dheri, Tehsil & District Peshawar.**

**..... (Appellant)**

**VERSUS**

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. The Superintendent Central Prison, Khyber Pakhtunkhwa, Mardan.
3. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
4. District Account Officer, Mardan.

**.... (Respondents)**

Mr. Shah Faisal Utmankhel  
Advocate`

... For appellant

Mr. Naseer ud Din Shah,  
Assistant Advocate General

... For respondents

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Date of Institution.....15.09.2020  
Date of Hearing.....30.09.2024  
Date of Decision.....30.09.2024

**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:

**“It is therefore, humbly prayed that on acceptance of this appeal, the impugned orders may kindly be set aside and the appellant may please be re-instated with all back benefits. Any other relief, of which the appellant are entitled to in the fact and circumstances of**



**the case, may also awarded/granted in favor of the appellant against respondents.”**

2. Brief facts of the case are that the Appellant was appointed as a Warder in BPS 05 on January 22, 2015, through appointment order No. 7117 issued by the Superintendent of Headquarters Prison Peshawar. He was implicated in a criminal case while on five days of casual leave starting from January 26, 2017. During his leave, the Appellant participated in a Jirga to mediate a dispute between his neighbor and the neighbor's maternal uncle, inadvertently being declared a guarantor for the neighbor. Subsequently, the maternal uncle stole the appellant's cheque book from his vehicle and threatened him. Upon discovering the theft, the appellant promptly filed a request with the Muslim Commercial Bank in University Town, Peshawar, to stop the cheques. Unbeknownst to him, this situation led to his illegal confinement for several days, preventing him from returning to work. The appellant was shocked to learn that the maternal uncle, Muhammad Nazeer, a fraudulent Afghan national, had lodged multiple FIRs against him, resulting in his prolonged detention. Despite being granted bail in these cases, the appellant faced further charges as Nazeer continued to file false complaints. Following an inquiry that revealed Nazeer's fraudulent activities, an FIR was registered against him, but he remains at large. The Appellant was unaware of his removal from service during these events, as documented in order No. 2233/PB dated 12.04.2017. After his release, he submitted a departmental representation on 24.06.2020, which was dismissed vide order dated 26.08.2020, 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.

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 record reveals that appellant was serving as Warder in respondent department, when he was given 5 days casual leave w.e.f. 26.01.2017, but he did not report for duty on expiry of his casual leave, whereafter authority issued absence notice on 13.12.2017 upon his home address but he failed to respond, therefore, publication in the newspaper was issued on 24.03.2017. Appellant had not reported or responded after publication, therefore he was removed from service by the authority vide impugned order dated 12.04.2017 for willful absence of 72 days. Appellant filed departmental appeal on 24.06.2020 by challenging the impugned order dated 12.04.2017, which he was required to challenge by filing departmental appeal within 30 days of passing of the impugned order, but that was filed with a considerable delay of three years, two months and twelve days, which


is hopelessly barred by time.

7. Appellant contended that he was arrested in a criminal case and his absence was not willful, he immediately, after release from custody, filed departmental appeal, therefore, time may also be condoned. Perusal of stamp paper annexed by the appellant reveals that it was scribed on 28.04.2018, which is after passing of impugned order on the basis of which appellant was booked in criminal case bearing FIR No. 173 dated 11.06.2018, FIR bearing No.1275 dated 19.11.2018 U/S 489F/419/420 at Police Station Pharipura, Peshawar. All the criminal cases and even stamp paper as guarantor were one year later to the impugned removal order dated 12.04.2017. Therefore, this plea is of no help to him both to rebut the willful absence or for condonation of delay of 3 years, 2 months and 12 days occurred in filing departmental appeal.

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.** For what has been discussed above, we are unison to dismiss the instant service appeal being devoid of merits and the same is dismissed accordingly. Cost shall follow the event. Consign.

**11. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of September, 2024.**

  
**(KALIM ARSHAD KHAN)**  
Chairman

  
**(RASHIDA BANO)**  
Member (J)

\*M.KHAN

**ORDER**

30.09.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din

Shah, learned Assistant Advocate General alongwith Mr. Amir Hayat  
(Litigation) Officer for respondents present.

2. Vide our detailed judgment of today placed on file, we are  
unison to dismiss the instant service appeal being devoid of merits  
and the same is dismissed accordingly. Cost shall follow the event.  
Consign.

3. *Pronounced in open court at Peshawar and given under our  
hands and seal of the Tribunal on this 30<sup>th</sup> day of September, 2024.*



(KALIM ARSHAD KHAN)  
Chairman



(RASHIDA BANO)  
Member (J)

\*M.KHAN