

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 156/2023

Date of presentation of Appeal.....17.01.2023
Date of Hearing.....24.09.2024
Date of Decision.....24.09.2024

Nasib Zada, Ex-Medical Technician (BPS-14) District Health Officer,
Mardan.**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Health, Health Department, Peshawar.
2. D.G Health Services, Khyber Pakhtunkhwa, Peshawar.
3. District Health Officer, Mardan.

.....**(Respondents)**

Present:

Mr. Wali Ullah, Advocate,For appellant
Mr. Muhammad Jan, District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as narrated by the appellant in his memorandum of appeal, are that he was appointed in Health Department on March 10, 1983 and possesses a Diploma in Medical Technology and BS (Honors) degree in Paramedical Science from the University of Peshawar. He claims eligibility for further promotion, which was initially hindered by the absence of service rules, prompting the introduction of such rules by the respondent department. Despite his inclusion in the promotion preparatory papers (at Serial No. 11), no promotion was granted and he was retired from service on attaining the age of superannuation on September 21, 2020. He claims that

he was entitled for proforma promotion, which he was allegedly denied despite promotions occurring in the years 2020 and 2021. He filed departmental appeal on 19.09.2022, which was not responded within the statutory period of 90 days, hence he filed the instant appeal for redressal of his grievance.

2. The respondents were summoned but they failed to submit their reply/comments despite being given numerous opportunities and even imposition of cost.

3. The learned counsel for the appellant argued that the appellant was fully qualified for the post of Technologist M.P (BPS-17) based on his educational qualifications and complete Performance Evaluation Reports (PERs), however, the lack of service rules at the necessary time was an administrative oversight that should not disadvantage the appellant. He next argued that the appellant was listed at Serial No. 11 in the prepared working papers, indicating recognition of his eligibility, therefore, his subsequent omission from the promotion process was unjust and unexplained. He further argued that despite his eligibility, the appellant was neither considered for promotion nor given any proforma promotion, leading to his retirement on 21/09/2020 without receiving the deserved promotions and benefits, which contravened principles of fairness and justice. He also argued that the appellant's attempts to obtain relevant documents to support his case were impeded by the Health Department's lack of cooperation, violating transparency principles. He next contended that the omission from the promotion list violated constitutional and legal provisions, particularly Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973, which ensure lawful treatment and

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non-discrimination. He further contended that, regardless of the appellant's retirement status, his right to monetary benefits from eligible promotions during his tenure is upheld by Apex Court precedents. In the last, he argued that the appeal in hand may be accepted as prayed for.

4. Conversely, learned District Attorney for the respondents maintained that administrative delays and procedural requirements, including the establishment of service rules, were standard and not intentionally discriminatory against the appellant. He next contended that all employees were subject to the same policies and procedures and the appellant's case did not demonstrate any intentional or unreasonable deviation from established norms. He further contended that promotions were conducted according to the prevailing rules once established and any claims to promotion or monetary benefits post-retirement lack legal grounding without clear departmental approval. In the last, he argued that the appeal in hand being meritless may be dismissed with cost.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.


6. The appellant through instant appeal is seeking proforma promotion to the post of Technologist M.P (BPS-17) which according to him, was due in the year 2020. However, he was retired on November 30, 2020, upon reaching the statutory retirement age. Subsequently, the appellant filed a departmental appeal regarding the proforma promotion on September 19, 2022. The appellant filed the departmental appeal on September 19, 2022, almost two years post-retirement. According to established legal precedents and regulations, departmental appeal must be filed within a stipulated time

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frame post the retirement or occurrence of the action being contested. The appellant's delay in filing the departmental appeal is significantly beyond any reasonable or legally allowable period. The appellant failed to file an application for condonation of delay. This omission is a critical procedural lapse. Legal protocol generally requires an appellant to provide a satisfactory explanation for any delay to enable the court or department to exercise its discretion to condone such delays. In the absence of such an application or explanation, the appeal is procedurally flawed. Given the lapse in timing and the lack of any appeal for condonation of delay, the appeal in hand deemed to be time-barred. Judicial advisories and policies emphasize the importance of adhering to the prescribed timelines, given their fundamental role in ensuring fairness and organizational discipline. In light of the procedural issues and the appellant's inability to justify the delay in filing the departmental appeal, we find that the appeal is untenable.

7. Consequently, the appeal in hand stand dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24th day of September, 2024*


AURANGZEB KHATTAK
Member (Judicial) 2024


RASHIDA BANO
Member (Judicial)


ORDER

24th Sept, 2024

1. Learned counsel for the appellant present. 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 stand dismissed being time barred. 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 24th day of September, 2024.*




(Rashida Bano)
Member (Judicial)

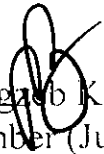

(Aurangzeb Khattak)
Member (Judicial) 24/9/2024.

09th July, 2024

Appellant alongwith his counsel present. Mr. Yousif Jamal, Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Requisite record mentioned in previous order sheet dated 29.05.2024 has not been produced by the respondents. Representative of the respondents seek further time for production of the said record. Last chance is given to the respondents for production of requisite record mentioned in previous order sheet dated 29.05.2024. To come up for record mentioned in previous order sheet dated 29.05.2024 as well as arguments on 24.09.2024 before the D.B. Parcha Peshi given to the parties.


(Muhammad Akbar Khan)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)