

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 623/2022

Date of presentation of Appeal.....13.04.2022
Date of Hearing.....23.09.2024
Date of Decision.....23.09.2024

Mst. Bibi Tasleem, Ex-Senior Teacher (BPS-18), Special Education Complex, Hayatabad, Phase-V, Peshawar.....**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Zakat, Usher, Social Welfare, Special Education & Women Empowerment Department, Khyber Pakhtunkhwa at Benevolent Fund Building, Peshawar, Cantt, Peshawar.
2. Secretary Finance, Government of Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.
3. Director, Social Welfare, Special Education & Women Empowerment, Khyber Pakhtunkhwa.
4. Director, Special Education Complex, Phase-V, Hayatabad, Peshawar.
.....(**Respondents**)

Present:

Mr. Javed Iqbal Gulbela, Advocate.....For appellant
Mr. Muhammad Jan, District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): Facts of the appeal as alleged by the appellant in her memorandum of appeal are that she was appointed as a Junior Teacher in the Social Welfare Department on April 27, 1982, in BPS-11, after the proper selection process. Throughout her career, she enhanced her education by obtaining a Bachelor of Education (B.Ed) in 1984, Master degree in Urdu (M.A. Urdu) in 1992 and a Master of Education (M.Ed) with a specialization in Hearing Impairment

in 1998. She was retired from service on reaching the age of superannuation on May 31, 2018. According to her, Notification No.FD(SR-1)1-67/82 dated August 24, 1983, allowed advance increments for teachers acquiring advanced degrees. Specifically, it stated that teachers holding a Master's Degree and an M.Ed would be eligible for a total of six advance increments. After her colleagues successfully petitioned for similar grievances in Writ Petition No. 1095-P/2011, the Peshawar High Court directed the Finance Department to grant advance increments to affected employees. Subsequently, she received only three increments for her first master's degree vide Notification No. FD(SOSR-I)-20123/2018 dated February 28, 2018. Feeling aggrieved, the appellant filed a departmental appeal on April 8, 2021, which was rejected vide impugned order dated July 7, 2021. The appellant has now approached this Tribunal by filing the present appeal for redressal of her grievance.

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

3. The learned counsel for the appellant contended that, based on the notifications issued by the Finance Department, particularly the notification from 1983, the appellant is explicitly entitled to six advance increments due to her qualifications. He next contended that the application of the notification should be extended equally to all educational departments, including the Social Welfare Department in which the appellant served. He further contended that the decision of the Peshawar High Court in Writ Petition No. 1095-P/2011, which directed compliance with the payment of advance increments to similarly aggrieved colleagues, establishes a legal

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precedent supporting her claim, therefore, failure of the Finance Department to apply this precedent to her case is unjust. He also contended that the respondents denial of the remaining 03 increments is a violation of the appellant rights under Article 4 of the Constitution, as it deprives her of the benefits she has legally earned through her educational pursuits. He next argued that the appellant is being treated unfairly compared to her peers, who have received their full increments. He further argued that the appellant made explicit attempts to rectify her situation through proper channels, yet each request was met with dismissal. He also argued that the lack of adequate response from the respondents indicates a disregard for the appellant's rights. In conclusion, he argued that the appeal in hand may be accepted by directing the respondents to sanction and grant the remaining three advance increments to the appellant, effective from 1998, on account of her possessing a higher qualification, namely an M.Ed. degree.

4. On the other hand, the learned District Attorney for the respondents opposed the contention of the learned counsel for the appellant and argued that the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012, effectively alters the payment obligations regarding advance increments, which law explicitly impedes any retrospective claims to increments owed prior to its enactment. He next argued that the notification of August 24, 1983, interpreted within the context of the educational framework, applies primarily to conventional elementary and secondary school teachers, thereby exempting the appellant and her claims from the intended benefits. He further argued that the appellant has received benefits in line with the

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policies established for teachers, including additional allowances and pay scales. Finally, he argued that the departmental appeal of the appellant is badly barred by time, therefore, the appeal in hand is liable to be dismissed on this basis alone.

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

6. The perusal of the case file shows that the appellant joined the service as a Junior Teacher in the Social Welfare Department in the year 1982, in BPS-11. There-after, she obtained a Bachelor of Education (B.Ed) in 1984, a Master's in Urdu (M.A Urdu) in 1992 and a Master of Education (M.Ed) in Hearing Impairment in 1998. According to her contention, on February 28, 2018, she was permitted to withdraw three advance increments for her first Master's degree but did not receive the remaining three increments for her M.Ed degree. So, she was required to have filed a departmental appeal for the remaining three advance increments within the next 30 days, however, the appellant did not do so and retired on reaching the age of superannuation on May 31, 2018. After retirement, she filed a departmental appeal on April 8, 2021, which was barred by time. The departmental appeal of the appellant was subsequently rejected vide order dated July 7, 2021. Furthermore, the appellant has failed to file any application for condonation of delay in submitting the appeal. The absence of such an application is a fundamental procedural requirement for considering any late submission. As established by precedents, a time-barred appeal raises significant concerns regarding its sufficiency and merits. The established case law, as articulated in the Supreme Court of


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Pakistan's judgment reported in 2011 SCMR 08, asserts that the question of limitation is not merely procedural but significantly impacts the substantive merit of any case. The ruling clarifies that an appeal that is time-barred is incompetent before the appropriate appellate authority and consequently, before the Tribunal. We acknowledge the rulings set forth in 2007 SCMR 513, 2006 SCMR 453, and PLD 1990 S.C 951, which reinforce the principle that the merits of a time-barred appeal need not be considered. Additionally, reference is made to the judgment cited in 1987 SCMR 92, stating that where an appeal is to be dismissed solely based on its limitation, a detailed discussion of its merits is unnecessary.

7. In light of the facts and legal precedents presented, we find that the departmental appeal of the appellant is time-barred, therefore, the appeal in hand is hereby dismissed on the ground of limitation. Parties are left to bear their own costs. File to 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 23rd day of September, 2024.*


AURANGZEB KHATTAK 2024.
Member (Judicial)



RASHIDA BANO
Member (Judicial)

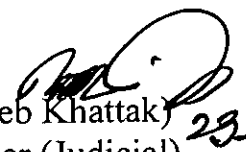
ORDER
23rd Sept, 2024

1. Learned counsel for the appellant present. Mr. Naseeb Khan, Section Officer (Litigation) and Mr. Nabi Gul, Superintendent alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, we find that the departmental appeal of the appellant is time-barred, therefore, the appeal in hand is hereby dismissed on the ground of limitation. Parties are left to bear their own costs. File to 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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