

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**SERVICE APPEAL NO. 7420/2021**

**BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)**  
**MRS. RASHIDA BANO ... MEMBER (J)**

**Muhammad Imran S/o Ashiq Muhammad, Valveman, Public Health  
Engineering Division, District Dera Ismail Khan.**

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

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Engineer, Public Health Engineering Circle, Dera Ismail Khan.
4. The Executive Engineer, Public Health Engineering Division, Dera Ismail Khan.

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

Mr. Muhammad Mohsin Ali  
Advocate ... For appellant

Mr. Naseer ud Din Shah,  
Assistant Advocate General ... For respondents

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Date of Institution.....16.09.2021  
Date of Hearing.....07.10.2024  
Date of Decision.....07.10.2024

**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:

**“On acceptance of this appeal this august court may please the respondents to release all the financial benefits to appellant**



regarding the absent period of appellant i.e. from 23.01.2012 to 30.01.2014 on the ground appearing hereafter;

Or

**Grant any other relief considered just and appropriate under the given circumstances of the case.”**

2. Brief facts of the case are that the appellant was appointed on 20.12.2004 as a Valveman in the Public Health Engineering Division, Dera Ismail Khan. After obtaining a medical certificate, he reported for duty and started performing his responsibilities efficiently, when FIR No. 90 dated 30-01-2012 was registered against him under Section 489-F of the Pakistan Penal Code at P.S. Cantt, Dera Ismail Khan. The appellant was subsequently arrested by the local police and remained in custody for over a year, as his bail petition was dismissed. The trial court convicted him, and although his appeal was also dismissed, the sentence was reduced to one and a half years. The appellant then filed a Criminal Revision Petition before the Honourable High Court Bench in Dera Ismail Khan, which ultimately set aside the conviction and acquitted him of all charges.

Following his acquittal, the appellant was suspended from service via office order dated 23-01-2012 due to his absence from duty, and an Enquiry Officer was appointed to investigate the matter. However, no final order regarding his dismissal or removal was issued. After his acquittal, the appellant submitted an application for the continuation of his service and the cancellation of his suspension order. Consequently, the appellant was reinstated vide office order dated 30-01-2014. Nevertheless, he was denied financial benefits for the period of his suspension. The appellant filed W.P No. 562-D/2020 before the

Honourable Peshawar High Court Bench, Dera Ismail Khan, but it was dismissed as not maintainable on 08-02-2021, directing him to approach the appropriate forum, the appellant submitted a departmental appeal to the competent authority on 25.05.2021, which was not responded, 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. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondent.

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 the record reveals that the appellant in instant appeal challenged order dated 30.01.2014, wherein benefits of suspension period during which he remained absent were refused to him. Appellant was required to challenge impugned order with 30 days of its passing as in accordance with Rule 3 of Revised Appeal Rules, which he filed on 25.05.2021 after considerable delay of 7 years 4 months and 23 days, which is hopelessly barred by time.




7. 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."*

8. 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:"*

9. It is well-entrenched legal preposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwar ul Haq Vs. Federation of Pakistan reported in 1995



SCMR 1505, Chairman, PIAC Vs. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan Vs. Khyber Zaman & Others reported in 2004 SCMR 1426.

**10.** For what has been discussed above, we are unison to dismiss the instant service appeal being barred by time, hence, not maintainable in the eyes of law and the same is dismissed accordingly. Costs shall follow the events. Consign.

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


  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

\*M.KHAN

Note

4<sup>th</sup> October, 2024 The case could not be fixed before DB at Camp Court, D.I. Khan due to cancellation of tour. Therefore, instant case be fixed on 07/10/2024 before D.B at the Principal Seat Peshawar. Counsel has been informed telephonically.

  
(Habib Ur Rehman Orakzai)  
Registrar

ORDER

- 07.10.2024
1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General for respondents present.
  2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being barred by time, hence, not maintainable in the eyes of law and the same is dismissed accordingly. Costs shall follow the events. Consign.
  3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 07<sup>th</sup> day of October, 2024.*

  
(AURANGZEB KHATTAK)  
Member (J)

  
(RASHIDA BANO)  
Member (J)

\*M.KHAN