

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 3238/2021

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

Mr. Abuzar, Ex-Constable No.1495, Frontier Reserve Police,
Headquarter, Peshawar.

.... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
2. The Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Noor Muhammad Khattak
Advocate`

... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General

... For respondents

Date of Institution.....23.02.2021
Date of Hearing.....03.10.2024
Date of Decision.....03.10.2024

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 the impugned orders dated 28.03.2016, 19.12.2017 and 07.11.2019 may very kindly be set aside and the appellant be re-instated into service with all back benefits.

Any other remedy which this august Tribunal deems fit that may

also be awarded in favor of the appellant.”



2. Brief facts of the case are that the appellant was appointed as a Constable in the respondent department and performed his duties efficiently. However, due to family issues appellant alongwith his family were forcefully expelled from the home due to which he remained absent from his duties, he faced difficulties in feeding his family, which led him to resume his duties. Subsequently, the respondents issued the impugned order dated 28.03.2016, whereby the appellant was dismissed from service with retrospective effect i.e. from 19.10.2015. The appellant feeling aggrieved, filed a departmental appeal to the appellate authority, which was dismissed by order dated 19.12.2017. He submitted a revision petition to respondent No.1, which was also rejected by order dated 07.11.2019. Consequently, the appellant has initiated 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 was appointed as a Constable in the respondent department in the year 2011 and he absented himself from duty w.e.f. 19.10.2015 without submitting any leave application and its sanction by the authority. Subsequently, the respondents issued the impugned order dated 28.03.2016, whereby the appellant was dismissed from service with retrospective effect i.e. from 19.10.2015. The appellant feeling aggrieved, filed a departmental appeal to the appellate authority, which was dismissed by order dated 19.12.2017. He submitted a revision petition to respondent No.1, which was also rejected by order dated 07.11.2019.

7. The record further reveal that the dismissal was issued on 28.03.2016, while appellant has filed departmental appeal (undated) before the appellate authority, which was rejected vide order dated 19.12.2017 by respondent No.2. He filed revision petition, copy of which is not annexed with his appeal and the same was rejected on 07.11.2019 with the remarks "being badly time barred."

8. The appeal has to face the issue of limitation for the reason that revision petition was dismissed being badly time barred beyond the period of 30 days provided for filing revision petition before the revisional authority, which is mentioned in Section-3 of the Revised Appeal Rules, 1986. Similarly, appellant was required to challenge revision order within 30 days by way of filing service appeal in this Tribunal which he filed on 23.02.2021 which is barred by 1 year 3 months and 16 days.

9. The revision petition as well as service appeal of the appellant is badly barred by time. 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."

10. It is well-entrenched legal preposition that when an appeal or revision 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.

11. 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.

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


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

ORDER


03.10.2024 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 03rd day of October, 2024.*


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.KHAN