

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 2205/2023

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Tehseen Ullah S/O Iltaf Hussain R/O village Turlandi, Tehsil Razzar,  
District Swabi. .... (*Appellant*)

VERSUS

1. Inspector General of Police, Peshawar.
2. Regional Police Officer, Mardan.
3. District Police Officer, Swabi.
4. Sub Divisional Officer Tehsil Lahor, District Swabi. ....(*Respondents*)

Mr. Mehtab Sikandar,  
Advocate

... For appellants

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

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Date of Institution..... 13.10.2023  
Date of Hearing.....03.10.2024  
Date of Decision..... 03.10.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974, against the order dated 09.11.2021, whereby the appellant was dismissed from service, against the order dated 12.04.2023 whereby his departmental appeal was rejected and against the order dated 28.08.2023 whereby his revision petition was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the



appellant be reinstated into service with full back benefits, alongwith any other relief that the Tribunal deemed appropriate.

02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in the provincial Police Khyber Pakhtunkhwa on 19.08.2013. He was implicated in a criminal case vide FIR No. 657 dated 01.07.2021 under Section 506/427/15AA at P.S Banr District Swat. No charge sheet and summary of allegations was served upon him and he was dismissed from service vide order dated 09.11.2021. When he was acquitted by the competent court of law, he filed departmental appeal which was rejected on 12.04.2023, thereafter he filed revision petition to the Inspector Geneal of Police under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 which was also rejected on 28.08.2023; hence the instant service appeal.

03. Respondents were put on notice, who submitted their joint written reply/comments. We heard the learned counsel for the appellant and learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that no charge sheet and summary of allegations were served upon the appellant nor any show cause notice was served upon him and he was dismissed from service as a result of ex-parte proceedings initiated against him which were against the law and rules. He argued that no opportunity of personal hearing was afforded to him and that he was dismissed from service without fulfilling the codal formalities. He further argued that mere FIR was



not a guilt unless it was proved wherein the appellant was acquitted by the competent court of law. He requested that the appeal might be accepted as prayed for.

05. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that in a short span of eight years' service, the appellant was awarded the penalty of reduction in pay as well as minor penalty of stoppage of one increment without cumulative effect. He argued that acquittal of the appellant was based on compromise and that he was not entitled for any leniency. He argued that departmental proceedings and criminal proceedings were two separate entities and could run side by side. Departmental enquiry, on account of his prolonged absence and his involvement in a criminal case, was conducted and consequently he was recommended for appropriate penalty and was accordingly dismissed from service by the competent authority. He requested that the appeal might be dismissed.

06. Arguments and record presented before us transpired that the appellant was dismissed from service vide order dated 09.11.2021 on the basis of the allegations of willful absence and involvement in a case vide FIR No. 657 dated 01.07.2021 under Section 506/427/15AA P.S Banr District Swat. Against that order he preferred his departmental appeal on 20.05.2023 stating therein illness of his father and as well as his own. When confronted, learned counsel for the appellant could not provide any date of arrest or bail of the appellant in the said criminal case, however record regarding his acquittal was produced before us according to which he was acquitted by the



Judicial Magistrate-I/Illaqqa Qazi, Swat vide order dated 23.06.2022. If we take into account the date of acquittal as 23.06.2022, the appellant was under obligation to submit his departmental appeal immediately after that but instead, he submitted his departmental appeal on 20.05.2023 after lapse of eleven months which was badly time barred. The record presented before us by the respondents showed that the appellant was awarded penalties of reduction of pay and stoppage of increments also, in the past. When the departmental appeal was barred by time, the service appeal before the Tribunal was not maintainable. Reliance is placed on the ruling set forth in 2007-SCMR-513, 2006-SCMR-453 and 2012-SCMR-195 which reinforce the principle that merit of a time barred appeal may not be considered. Reference is also made to the judgment cited as 1997-SCMR-92, wherein it has been stated that where an appeal is to be dismissed solely based on its limitation, a detailed discussion of its merits is not necessary.

07. In view of the above discussion, the appeal in hand is dismissed on the ground that the departmental appeal was badly time barred. Cost shall follow the event. Consign.

08. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03<sup>rd</sup> day of October, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(AURANGZEB KHATTAK) 03/10  
Member (J) 2024.

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01. . Mr. Mehtab Sikandar, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is dismissed on the ground that the departmental appeal was badly time barred. Cost shall follow the event. Consign.

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

  
(FAREEHA PAUL)  
Member (E)

 - 03/10/2024  
(AURANGZEB KHATTAK)  
Member (J)

\*Fazle Subhan, P.S\*