

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK ... MEMBER (Judicial)**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No. 1665/2023

Date of presentation of Appeal.....15.08.2023
Date of Hearing.....18.10.2024
Date of Decision.....18.10.2024

Mudasir Khan Ex-Constable No. 792, District Police Mohmand.
.....**Appellant**

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
 2. The Regional Police Officer, Mardan Region at Mardan.
 3. The District Police Officer District Mohmand.
-(**Respondents**)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant, Mudasir Ex-Constable No. 792, was proceeded against departmentally on the allegations that he was charged in case FIR No. 66 dated 13.09.2021 under Section 9DPCNSA of the Police Station Excise Hazara Region Abbottabad on the allegation that 2610 gram Chars was recovered from his possession. On conclusion of the inquiry, the appellant was dismissed from service vide impugned order dated March 7, 2022. The appellant preferred departmental appeal on 13.01.2023, which was rejected being devoid of merit as well as time barred vide impugned order dated 30.03.2023. Subsequently, the appellant also filed

revision petition on 05.05.2023, which was not responded, hence, he filed the instant appeal before this Tribunal for redressal of his grievance.

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

3. The learned counsel for the appellant contended that the FIR registered against the appellant was baseless and concocted and despite being acquitted by the Additional Sessions Judge V/ Special Court Abbottabad on December 20, 2022, the dismissal from service was not revoked. He next contended that the dismissal order dated March 7, 2022, was issued without conducting a proper inquiry. He further contended that essential formalities, such as providing a show cause notice, a chance for a personal hearing, a charge sheet, or the opportunity to cross-examine witnesses, were not fulfilled, violating principles of natural justice. He also contended that the respondents violated Articles 4 and 25 of the Constitution by not treating him in accordance with the law and procedural fairness required under the rules governing departmental proceedings. He next argued that the departmental appeal was unjustly rejected as time-barred despite the appellant's prompt action post-acquittal. He further argued that the department acted arbitrarily and with malafide intent in dismissing the appellant without a proper inquiry, contrary to various judgments of the Supreme Court requiring due process in punitive actions. In the last, he argued that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

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18/10/2024.

4. On the other hand, learned Deputy District Attorney for the respondents contended that the appellant was charged with a heinous criminal offense involving narcotics, distinctly affecting his service record and warranting a departmental inquiry irrespective of the criminal court's acquittal. He next contended that departmental and criminal proceedings can run concurrently as they serve different purposes and the dismissal order of the appellant was based on findings from a duly conducted departmental inquiry led by Inspector Shakir Khan, which confirmed the appellant's involvement in the offense. He further contended that a formal charge sheet and summary of allegations were issued and due process was followed, culminating in a major penalty of dismissal after the appellant's unsatisfactory response to the final show cause notice. He also contended that the rejection of the departmental appeal as time-barred is legally sound, based on precedents from the Supreme Court (citing cases like 2017 SCMR 965) and any subsequent appeals, likewise, are deemed incompetent if initially time-barred. He next argued that the nature of the charges against the appellant reflects poorly on the police force's integrity, mandating stern action, therefore, the appellant's dismissal is justified as compliance with law and department rules was thoroughly observed. In the last, respondents deny any violation of constitutional protections or procedural deficiencies, affirming that the actions taken were in strict accordance with established legal standards and do not warrant any reversal of the dismissal.

18/10/2024

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

6. The perusal of the case file reveals that the appellant was proceeded against departmentally on the allegations of involvement in case FIR No. 66 dated 13.09.2021 under Section 9DPCNSA of Police Station Excise Hazara Region Abbottabad for recovery of 2610 grams Chars. On conclusion of the inquiry, the appellant was dismissed from service vide impugned order dated 07.03.2022. The appellant claims to have filed a departmental appeal on 13.01.2023 after being acquitted on 20.12.2022. The acquittal judgment indicates that the appellant was not incarcerated but on bail during the trial. The appellate authority rejected the appellant's departmental appeal on 30.03.2023 for being time-barred. The filing of departmental appeal is outside the allowed period, making it time-barred. The appellant submitted a revision petition on 05.05.2023, which was also time-barred. No application for condonation of delay was submitted by the appellant, which is crucial for considering late submissions. According to established precedents, particularly the Supreme Court of Pakistan's judgment (2011 SCMR 08), the concern of limitation is not just a procedural formality but significantly influences the substantive merit of the case. The departmental appeal that is time-barred before the appellate authority level is also deemed incompetent when presented to any Tribunal. Furthermore, judgments (e.g., 2007 SCMR 513, 2006 SCMR 453, and PLD 1990 S.C 951) affirm that merits of a time-barred appeal are typically not examined. The principle established in 1987 SCMR 92 states that if an appeal is dismissed due to


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18/10/2024*

being time-barred, a detailed consideration of its merits is deemed unnecessary.

7. Given these legal principles and the absence of procedural compliance by the appellant, the departmental appeal of the appellant is ~~be~~ time-barred. As a result, this appeal is dismissed on the grounds of limitation and is deemed not maintainable. Each party is responsible for its own costs. The case file is ordered to be archived in the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)

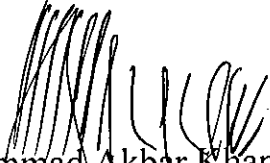

MUHAMMAD AKBAR KHAN
Member (Executive)

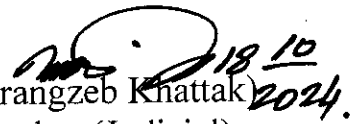
Naeem Amin

ORDER

18th Oct, 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, this appeal is dismissed on the grounds of limitation and is deemed not maintainable. Each party is responsible for its own costs. The case file is ordered to be archived in the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 18th day of October, 2024.*


(Muhammad Akbar Khan)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)