

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 1835/2023

Date of presentation of Appeal.....12.09.2023
Date of Hearing.....22.10.2024
Date of Decision.....22.10.2024

Shafi Ullah S/o Izat Khan Caste Marwat R/o Wanda Dost Muhammad
Shadi Khel District Tank. Ex-Constable Elite Force.

.....*Appellant*

Versus

1. Provincial Police Officer (IG), Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar.
4. SP Elite Force Khyber Pakhtunkhwa Peshawar.
5. District Police Officer Dera Ismail Khan.
6. Director Finance Officer of Elite Force Khyber Pakhtunkhwa Peshawar.....(*Respondents*)

Present:

Mr. Sheikh Iftikhar-ul-Haq, AdvocateFor appellant

Mr. Muhammad Jan, District Attorney.....For respondents

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JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant,

Shafi Ullah, was appointed as a Constable in the Frontier Reserve Police on January 1, 2011 and was later transferred to the Elite Force.

Disciplinary proceedings were initiated against him on the allegations of

his involvement in case FIR No. 76 dated April 1, 2022, under Sections

302/324/34 of the Pakistan Penal Code (PPC) of the Police Station Gul

Imam, District Tank. Furthermore, he was also accused of being absent

from duty without leave or prior permission from the competent

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authority since March 31, 2022. Upon completion of the inquiry, the appellant was awarded major punishment of dismissal from service vide impugned order dated June 30, 2022. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide impugned order dated September 8, 2022. Subsequently, the appellant also filed a revision petition, which was also rejected vide impugned order dated August 28, 2023. The appellant has now approached this Tribunal by filing the present appeal for redressal of his 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 FIR No. 76 dated April 1, 2022, under Sections 302/324/34 of the Pakistan Penal Code at Police Station Gul Imam, District Tank, was registered against the appellant to damage his familial honor. He next contended that the appellant was granted ad-interim bail, which was later on confirmed and he was acquitted on October 27, 2022, due to compromise with the complainant. He further contended that no charge sheet was issued nor was a proper inquiry conducted in accordance with the procedure, which violated the principles of natural justice. He also contended that the appellant was dismissed during the bail proceedings without being given a proper opportunity to defend himself. He next argued that the dismissal order dated June 30, 2022, violated the Police Rules of 1934, as amended in 2014 and the ESTA code. He further argued that, as the sole bread earner, the appellant's dismissal caused financial and familial distress. He also argued that the departmental appeal was unjustly rejected as

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time-barred despite the appellant's prompt action post-acquittal. In the last, he urged that the impugned orders may be set aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, the learned District Attorney for the respondents contended that the appellant absented himself from duties starting March 31, 2022 and was involved in a criminal case. He next contended that a charge sheet and statement of allegations were issued to the appellant and a proper inquiry was conducted in the matter. He further contended that the inquiry officer confirmed the appellant's absence without leave and recommended his dismissal, which was executed on June 30, 2022. He also contended that the appellant's/ acquittal on October 27, 2022, was irrelevant to the dismissal, which was procedurally correct at the time. He next argued that the departmental appeal of the appellant was rejected vide order dated September 8, 2022, as it was time-barred, making the instant appeal not maintainable. He further argued that the appellant's action is without merit and may be dismissed due to a lack of cause, procedural compliance and being time-barred.

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

6. The perusal of the record shows that the ~~he~~ appellant was subjected to departmental proceedings concerning allegations of involvement in a criminal case resulting in FIR No. 76 dated April 1, 2022. This case involved serious charges under Sections 302 (murder), 324 (attempted murder) and 34 (common intention) of the Pakistan Penal

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Code (PPC). The appellant also faced charges of unauthorized absence from duty since March 31, 2022. Following these proceedings, the appellant was awarded major punishment of dismissal from service vide impugned order dated June 30, 2022. The appellant claims to have filed departmental appeal subsequent to his acquittal in the criminal case on October 27, 2022. However, the appellant has not provided a copy of the departmental appeal, nor proof of its filing date, which raises transparency issues concerning the timeliness of the departmental appeal. The acquittal order dated October 27, 2022 indicates that the appellant was not incarcerated but was on bail from July 21, 2022 during the trial. This timeline indicates that the appellant's position during the period of absence could have influenced both departmental and criminal proceedings. The appellate authority rejected the departmental appeal on September 8, 2022, on the grounds of being time-barred. The filing of departmental appeal is outside the allowed period, making it time-barred. The appellant subsequently filed a revision petition on May 4, 2023, which is also time-barred, as it fell outside the permissible time frame for such submissions. Notably, the appellant did not submit an application for condonation of delay, which is essential for any late submissions to be considered valid. 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

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

7. In light of the above findings, we conclude that the appellant's departmental appeal was declared time-barred by the appellate authority, rendering it legally incompetent to be processed further. The absence of an application for condonation of delay further weakens the appellant's case for reconsideration. Based on established legal precedents, the merits of a time-barred appeal are not subject to examination, thus upholding the rejection of the appellant's subsequent revision petition.

8. Consequently, it is held that as the departmental appeal of the appellant was barred by time, therefore, the appeal in hand stands dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of October, 2024.*



AURANGZEB KHATTAK *22/10/2024*
Member (Judicial)


FAREEHA PAUL
Member (Executive)

Note

4th October, 2024 The case could not be fixed before D.B at Camp Court, D.I. Khan due to cancellation of tour. Therefore, instant case be fixed on 22/10/2024 for arguments before D.B at the Principal Seat, Peshawar. Counsel be informed telephonically.


Counsel informed



(Habib Ur Rehman Orakzai)
Registrar

ORDER

22nd 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, it is held that as the departmental appeal of the appellant was barred by time, therefore, the appeal in hand stands dismissed being not competent. Parties are left to bear their own costs. File 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 22nd day of October, 2024.*


(Farzeha Paul)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)

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