

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 792/2022

Date of presentation of Appeal.....28.04.2022
Date of Hearing.....28.10.2024
Date of Decision.....28.10.2024

Muhammad Saleem S/o Mumtaz Khan, R/o Kukkaray, Swat. Ex-
Constable No. 4067, FRP, Swat.**Appellant**

Versus

1. Deputy Commandant FRP, KP, Peshawar.
2. Commandant FRP, KP, Peshawar.

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

Present:

Mr. Arbab Saif-ul-Kamal, AdvocateFor appellant
Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case are that the appellant was enlisted as a Constable in Police Department in the year 2004. Disciplinary proceedings were initiated against the appellant on the allegations of his absence from duty with effect from 03.06.2008 without any leave/permission of the competent Authority. On conclusion of the inquiry, the appellant was removed from service vide impugned order dated 21.10.2008. Feeling aggrieved, the appellant filed departmental appeal, which was rejected on 23.07.2010. On, 01.04.2022, the appellant submitted reminder, which was not responded, hence he filed the instant appeal for redressal of his grievance.

Handwritten signature and date: 28/10/2024

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 the Swat Valley was under the control of insurgents during the relevant period, with government operations severely disrupted, therefore, this situation posed a grave threat to public servants, especially police officers, who were specifically targeted. He next contended that the appellant's absence was not intentional but a consequence of the security crisis and that the employees from various departments, particularly the police, were similarly compelled to withdraw from duty due to legitimate fear for their lives. He further contended that the removal order and rejection of departmental appeal order of the appellant were never communicated to the appellant in a timely manner and the appellant only received these documents in April 2022, making it unjust to consider the appeal as time-barred. He next argued that multiple police officials who had been removed from service under similar conditions were later reinstated, therefore, the appellant is also entitled for the similar relief. He further argued that procedural requirements under the Police Rules, specifically regarding inquiry formalities, were not adhered to. He also argued that any disciplinary action undertaken without adherence to the legal formalities is legally unsustainable. 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.


28/10/2024.

4. On the other hand, the learned Assistant Advocate General for the respondents contended that the appellant's prolonged absence constituted a willful desertion. He next contended that despite the challenging situation in Swat, other police personnel continued their duties, facing risks to maintain law and order but the appellant's conduct reflected an act of cowardice, undermining the police's obligation to protect citizens. He further contended that all procedural requirements were strictly followed by issuing charge sheet, statement of allegations and show cause notice to the appellant. He also contended that an inquiry was conducted and the appellant was found guilty of unauthorized absence. He next argued that the appellant's instant appeal is time-barred, given that his removal order was issued in 2008 and his departmental appeal was rejected in 2010. He further argued that the appellant's situation could not be equated with the cases of other officials who were reinstated, as each case is determined by its specific facts and merits. In the last, he argued that the appeal in hand being time barred as well as meritless may be dismissed with cost.

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 appellant was removed from service vide impugned order dated 21.10.2008 on the allegation of absence from duty with effect from 03.06.2008 without any leave/permission of the competent authority. Subsequently, the

*Amir
28/10/2024.*

appellant filed departmental appeal, though the record does not indicate the exact date of its filing. However, the same was rejected on 23.07.2010 and under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appellant was required to have challenged the rejection order of departmental appeal dated 23.07.2010 by filing of service appeal before this Tribunal within 30-days period from the date of the communication of that order. However, the appellant filed the present appeal only on 28.04.2022, over 12 years after the rejection of departmental on 23.07.2010, rendering this appeal significantly time-barred. The appellant's submission of a reminder in 2022 cannot legally extend or enlarge the limitation period established by law. Additionally, the appellant did not submit an application for condonation of delay to explain or justify this substantial lapse of time. It is a well-settled that law favors individuals who act diligently in pursuing their claims and disfavors those who neglect their responsibilities in this regard. The Supreme Court of Pakistan, in its judgment reported as PLD 2015 SC 212, has clearly affirmed the importance of the law of limitation, emphasizing that individuals must pursue legal remedies diligently, without negligence and within the legally prescribed time frame. The Court observed that allowing individuals to initiate legal actions at their convenience would exploit and misuse the judicial process, ultimately harming the integrity of the legal system and society as a whole. Such practices cannot be permitted in a state governed by the rule of law and the Constitution. Therefore, compliance with the limitation period is not a mere

28/10/2024

technicality but rather a foundational aspect of the legal system itself. This Tribunal can enter into merits of the case only, when the appeal is within time. Worthy Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation, its merits need not to be discussed.

7. Consequently, due to the substantial delay in filing of service appeal, the appeal in hand stand dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28th day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial) 28/10/2024

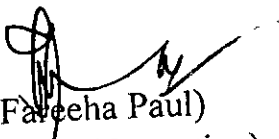


FAREHA PAUL
Member (Executive)

Naeem Amin

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 792 of 2022

Muhammad Saleem versus Deputy Commandant FRP, KP, Peshawar and 01 another.

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p>Order-20 28th October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Arbab Saif-ul-Kamal, Advocate on behalf of appellant.2. Mr. Naseer-ud-Din Shah, Assistant Advocate General on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, due to the substantial delay in filing of service appeal, the appeal in hand stand dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28th day of October, 2024.</i></p> <p style="text-align: center;"> (Faheeha Paul) Member (Executive)</p> <p style="text-align: right;"> (Aurangzeb Khattak) Member (Judicial)</p> <p style="text-align: right;">28-10-2024</p> <p>*Naeem Amin*</p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 792/2022

Date of presentation of Appeal 28.04.2022
Date of hearing 28.10.2024
Date of Decision 28.10.2024

Muhammad Saleem S/o Mumtaz Khan, R/o Kukkaray, Swat. Ex-Constable No. 4067, FRP, Swat**Appellant**

Versus

1. Deputy Commandant FRP, KP, Peshawar.
2. Commandant FRP, KP, Peshawar.
.....**(Respondents)**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER NO. 1423-26/PA/FRP/HQRS DATED 21.10.2008 OF R. NO. 1 WHEREBY APPELLANT WAS REMOVED FROM SERVICE AND PERIOD OF ABSENCE WAS TREATED AS LEAVE WITHOUT PAY OR OFFICE ORDER NO. 5483-84/EC DATED 23.07.22010 OF R. NO. 02 WHEREBY REPRESENTATION OF APPELLANT WAS REJECTED FOR NO LEGAL REASON.

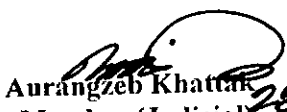
1. Mr. Arbab Saif-ul-Kamal, AdvocateFor appellant
2. Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. 5000/-
Total	Rs. 100/-	Total	Rs. 5000/-

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 28th day of October 2024.


Farzeha Padi
Member (Executive)


Aurangzeb Khattak
Member (Judicial)
28.10.2024