

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

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

**Service Appeal No. 1925/2023**

Date of presentation of Appeal.....21.09.2023  
Date of Hearing.....25.10.2024  
Date of Decision.....25.10.2024

**Sana Ullah Sethi**, Son of Salah U Din, R/o Shehbaz Town Tauseef Abad District Dera Ismail Khan, presently posted as Assistant Sub-Inspector at the office of Excise & Taxation D.I.Khan  
.....**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Excise and Taxation, Khyber Pakhtunkhwa, Peshawar.
  2. The Director General, Excise, Taxation and Narcotics Control Khyber Pakhtunkhwa, Peshawar.
  3. Regional Director Excise, Taxation and Narcotics Control Dera Ismail Khan.
- .....**(Respondents)**

----

Present:

Mr. Muhammad Abdullah Baloch, Advocate .....For appellant  
Miss. Perkha Aziz, Legal Advisor.....For respondents

----

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The facts of the case as narrated by the appellant in his memorandum of appeal are that he has been serving as Assistant Sub-Inspector (ASI) under the Excise and Taxation Department. He was promoted to the post of ASI on an acting charge basis on May 11, 2012, via Promotion Order No. 11747-84/Estb/XXXV-D-412 and was subsequently promoted on regular basis, as per the impugned order dated October 25, 2017 (Order No. 9609-9671/Estb/XXXV-D-412), after five years on the acting charge

*M.A.*  
*25/10/2024*

basis. He contends that despite being eligible for promotion since 2012, his time served in the acting capacity has not been properly recognized in subsequent seniority lists, leading to an incorrect placement at serial number 133 in the tentative seniority list circulated on January 1, 2021. He filed a representation on January 26, 2021, against the seniority list, subsequently appealing to this Tribunal, which was disposed of being not pressed that appeal and was out to have made application for antedation of his promotion, citing his eligibility and vacancies. On January 17, 2023, a new seniority list was issued, where he was placed at serial number 87 instead of 53. Feeling aggrieved, he filed departmental appeal, which bears no date, however, the same has not responded, hence the approached this Tribunal 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 the appellant was entitled to have his acting charge period recognized for seniority purposes, has he served as a qualified ASI on a vacant post and should be promoted retroactively to his acting charge date. He next contended that the various time frames for his promotion and seniority have been influenced by the department's inaction and lethargy, violating his constitutional and service rights. He further contended that the impugned orders are discriminatory and infringe upon procedural fairness, shouldering him with an undue burden to rectify the circumstances around his promotion. He next argued that the appellant was having more than the requisite service period prior to his promotion

  
25/10/2024

and was eligible when the vacancies arose, he calls for correction in the seniority list to reflect his rightful status.

4. On the other hand, learned Legal Advisor for the respondents contended that the appellant was duly promoted and regularized in the year 2017 and if he has any objections, the same should have been raised in a timely manner, which he has not raised at the relevant time, hence he is estopped from challenging a concluded transaction. She next contended that the appellant did not formally contest his promotion order or the subsequent seniority placement, thereby waiving his opportunity to seek a retrospective promotion. She further contended that the final seniority list was issued in accordance with law/rules and had not received any timely objections from the appellant, rendering the present appeal unmeritorious. In the last, she argued that the appeal in hand is time barred, therefore, the same may be dismissed on this score alone.

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 initially promoted to the post of Assistant Sub-Inspector (ASI) on an acting charge basis on May 11, 2012 and was subsequently, promoted on regular basis on October 25, 2017, with effect from February 9, 2017. If the appellant had any grievance regarding the said promotion order, he was required to seek redressal thereof from the competent forum within the stipulated time period. The appellant's inaction in contesting the order dated October 25, 2017 serves to undermine his current claims regarding seniority adjustments. The appellant filed Service Appeal

*Amal*  
*25/10/2024*

No. 5190/2021, asserting that his placement at serial No. 133 in the seniority list dated January 1, 2021, was incorrect. However, the appeal did not challenge the foundational issue surrounding his promotion from May 11, 2012, as an acting ASI, nor did it address his alleged entitlement to an earlier effective date of promotion. This appeal was disposed of on February 15, 2023, primarily due to the appellant's failure to advance the matter. A new tentative seniority list was issued on January 17, 2023, placing the appellant at serial No. 87. The appellant allegedly filed departmental appeal challenging this tentative list, on April 10, 2023. The statutory timeframe for responding to the departmental appeal was established as 90 days, with the deadline for filing any service appeal being August 10, 2023. However, the instant appeal, dated September 21, 2023, is significantly beyond this prescribed timeline. To justify this delay, the appellant submitted an application for condonation of delay, citing a transfer to South Waziristan which occurred on July 7, 2023, and asserting that law and order issues hindered his ability to respond in a timely manner. Additionally, the appellant referred to health concerns and supplied a medical prescription dated August 16, 2023, as further evidence of his claim. Upon examination, the justifications put forth by the appellant to be inadequate. Importantly, there is a lack of documentation or credible evidence to corroborate the claims regarding law and order conditions in South Waziristan during the relevant period. The failure to substantiate these claims raises significant doubts about the validity of the asserted constraints. Moreover, the medical evidence provided, which pertains to

Nov 25/10/2024.

a date after the deadline for the appeal, does not effectively serve to excuse the delay. The prescription dated August 16, 2023, occurs well after the necessary response deadline of August 10, 2023, thereby failing to offer a credible or justifiable rationale for the untimely filing of the appeal. In light of the totality of the evidence reviewed, we conclude that the justifications presented do not satisfy the requisite criteria for condonation of delay. Furthermore, the substantive challenges against the appellant's placement in the seniority list lack sufficient merit.


7. In the judgment reported as 1987 SCMR 92, the Supreme Court of Pakistan addressed the issue of appeals that are dismissed on the grounds of limitation. The court held that when an appeal is found to be time-barred, it is unnecessary to delve into the merits of the case being appealed. This ruling emphasizes the importance of adhering to procedural rules and statutory limitations in judicial proceedings. The ruling establishes that if an appeal is dismissed solely on the basis of limitation, the court is not required to examine the case's substantive issues or merits. This underscores the idea that compliance with legal timelines is crucial for invoking appellate jurisdiction. The judgment highlights the principle that the right to appeal is contingent upon timely filing. The courts take the expiration of appeal deadlines seriously, reinforcing the necessity for parties to be vigilant and proactive in pursuing their legal rights. The judgment further serves as a reminder to litigants regarding the importance of being aware of and adhering to legal deadlines. Failure to do so may result in the outright dismissal of a case, regardless of its merits. The decision in 1987 SCMR 92 reflects a


25/10/2024

broader legal principle regarding the interplay between procedural rules and substantive justice. It stresses that while the merits of a case can be crucial, the framework of the law insists on the observance of established limitations, which serves to foster a disciplined legal environment. Litigants are thus encouraged to prioritize adherence to deadlines to ensure that their claims are heard and decided upon.

8. In light of the above findings, the appeal in hand stands dismissed being time barred. 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 25<sup>th</sup> day of October, 2024.*

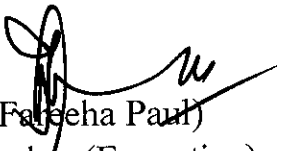
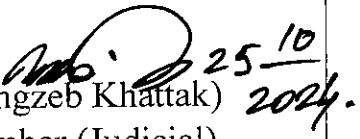
  
AURANGZEB KHATTAK 25/10/2024  
Member (Judicial)

  
FAREEHA PAUL  
Member (Executive)

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No. 1925 of 2023

Sana Ullah Sethi versus Government of Khyber Pakhtunkhwa through Secretary Excise and Taxation, Khyber Pakhtunkhwa, Peshawar and 02 others.

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
<p>Order-11 25<sup>th</sup> October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Muhammad Abdullah Baloch, Advocate on behalf of appellant.</li><li>2. Miss. Perkha Aziz, Legal Advisor with authority letter for the respondents.</li></ol> <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the appeal in hand stands 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 25<sup>th</sup> day of October, 2024.</i></p> <p> (Fareeha Paul) Member (Executive)</p> <p> (Aurangzeb Khattak) 25/10/2024. Member (Judicial)</p> <p>*Naeem Amin*</p>

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 1925/2023**

Date of presentation of Appeal 21.09.2023  
Date of hearing 25.10.2024  
Date of Decision 25.10.2024

**Sana Ullah Sethi**, Son of Salah U Din, R/o Shehbaz Town Tauseef Abad District Dera Ismail Khan, presently posted as Assistant Sub-Inspector at the office of Excise & Taxation D.I.Khan .....*Appellant*

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Excise and Taxation, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, Excise, Taxation and Narcotics Control Khyber Pakhtunkhwa, Peshawar.
3. Regional Director Excise, Taxation and Narcotics Control Dera Ismail Khan.  
.....(*Respondents*)

---

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER NO. 9609-9671/ES/XXXV-D-412 DATED 25.10.2017 TO THE EXTENT OF APPELLANT BY GIVING RETROSPECTIVE EFFECT TO THE APPELLANT AND FOR THE CORRECTION OF SENIORITY LIST OF ASSISTANT SUB-INSPECTOR (BPS-11) NO. 5720/ESTB/XXX-A-227/D (SENIORITY) DATED 17.01.2023 VIDE WHICH THE APPELLANT HAS BEEN WRONGLY PLACED AT SERIAL NO. 87 AND FINALLY AGAINST THE INDECISION OF DEPARTMENTAL APPEAL/REPRESENTATION DATED 10.04.2023 OF THE APPELLANT.

1. Mr. Muhammad Abdullah Baloch, Advocate .....For appellant
2. Miss. Perkha Aziz, Legal Advisor.....For 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. Nil
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

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 25<sup>th</sup> day of October 2024.

  
**Faraha Paul**  
Member (Executive)

  
**Aurangzeb Khattak**  
Member (Judicial)