BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1446/2023

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Anwar Gul, SPET (BPS-16), GHSS Peer Sabaaq, District Nowshera.

..... (*Appellants*)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar & **70 Others.**

.... (*Respondents*)

Mr. Waleed Adnan
Advocate ... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General ... For respondents

Date of Institution.....10.07.2023
Date of Hearing.....14.10.2024
Date of Decision.....14.10.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

> **"On acceptance of this appeal, the impugned notification dated 05.04.2022 may very kindly be set aside to the extent of private respondents at serial No. 5 to 74 and the respondents may further please be directed to consider the appellant for regular promotion**

to the post of Instructor Physical Education (BPS-17) with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be granted in favor of the appellant."

2. Brief facts of the case are that the appellant was initially appointed as a Physical Education Teacher (PET) in BPS-9 within the respondent department through an order dated 22.10.1989. He possesses significant qualifications in the field of Physical Education, having obtained a Diploma, JDPE, and a Master of Physical Education in 2018 from a recognized university, along with a B.Ed. The appellant was subsequently promoted to Senior Physical Education Teacher (SPET) in BPS-16 via notification dated 28.02.2012. The service structure for his cadre was established through a notification dated 24.07.2014, which included a provision for promotion from SPET to Director of Physical Education. However, this position was later re-designated as Instructor Physical Education (BPS-17) vide notification dated 26.04.2018.

The appellant's file, along with those of his colleagues, was forwarded to respondent No. 3 for promotion to Instructor Physical Education (BPS-17). While the appellant's colleagues were promoted to the post of Instructor Physical Education (BPS-17) through notification dated 20.10.2020, the appellant, who was ranked at Serial No. 140 in the seniority list as of 02.09.2021, was unjustly overlooked. Instead, junior colleagues of the appellant ranked at Serial Nos. 152, 169, and 171, were promoted. Feeling aggrieved, the appellant filed a departmental appeal dated 12.03.2023, which was not responded. Hence, the present service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal, while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

6. The perusal of record reveals that the appellant in the instant service appeal challenged/impugned notification dated 05.04.2022, whereby juniors to the appellant has been promoted to the post of Instruct Physical Education (BPS-17) and the appellant has been ignored. Appellant was required to challenge the impugned notification dated 05.04.2022 by filling departmental appeal within next 30 days in accordance with Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 and the relevant rules, but he filed departmental appeal on 12.03.2023 before the appellate authority after considerable delay of 11 months and 7 days, which is barred by time.

7. Therefore, the appeal in hand is not competent in view of the judgment of the Supreme Court of Pakistan in 2007 SCMR 513 titled "Muhammad Aslam Vs. WAPDA and others", wherein, the Apex Court has held that:

"If departmental appeal was not filed within the statutory period, appeal before Service Tribunal would not be competent. Civil Servant was non-suited for non-filing of appeal within time, therefore, Supreme Court declined to interfere with the judgment passed by Service Tribunal. Leave to appeal was refused."

8. Furthermore, Section-4 of the Service Tribunal Act, 1974 also gives the period for filing departmental appeal as thirty days. The same is reproduced below:

"4. Appeal to Tribunals.--- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter:"

9. It is well-entrenched legal preposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwar ul Haq Vs. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC Vs. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan Vs. Khyber Zaman & Others reported in 2004 SCMR 1426.

10. For what has been discussed above, we are unison to dismiss the instant service appeal being barred by time, hence, not maintainable in the eyes of law and the same is dismissed accordingly. Costs shall follow the events. Consign.

11. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of October, 2024.

(KALIM ARSHAD KHAN)
Chairman

(RASHIDA BANO)
Member (J)

*M.KHAN

ORDER

14.10.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General anlongwith Mr. Hamdullah Jan, Assistant Director, for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being barred by time, hence, not maintainable in the eyes of law and the same is dismissed accordingly. Costs shall follow the events. Consign.

3. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14th day of October, 2024.

(KALIM ARSHAD KHAN)
Chairman

(RASHIDA BANO)
Member (J)

*M.KHAN