

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 3183/2020

Date of presentation of Appeal.....17.04.2020
Date of Hearing.....02.10.2024
Date of Decision.....02.10.2024

Dr. Muhammad Idrees, Medical Officer Type-D Hospital, Panyala, Dera Ismail Khan.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Health, Khyber Pakhtunkhwa, Peshawar.
2. Director General Health, Khyber Pakhtunkhwa, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, KPK Peshawar.

.....(Respondents)

Present:

Mr. Sarwar Khan Kundi, Advocate.....For appellant
Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in his memorandum of appeal, are that he served as a Medical Officer at the Basic Health Unit (BHU) in Sar Kanda, South Waziristan Agency, from April 11, 2005 to April 9, 2010. During this period, he performed his duties regularly and diligently, receiving due remuneration. However, due to the outbreak of insurgency and the war against terrorism, he, along with other government officials and local civilians, were compelled to vacate the

02/10/2024

area, which rendered him unable to continue his service from April 10, 2010 to July 9, 2014. The department issued a notification dated January 19, 2018, treating his absence as Extraordinary Leave (EOL) without pay and thereafter, another notification dated August 7, 2018, was issued whereby his period from July 10, 2014 to January 21, 2018, was regularized as Extraordinary Leave without pay. Feeling aggrieved, the appellant filed a departmental appeal on January 6, 2020, which was not responded within the statutory period of 90 days, hence the instant appeal.

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 absence of the appellant was involuntary, stemming from wartime conditions that declared inhabitants, including the appellant, as IDPs, which amounted to 'forced leave' rather than unauthorized absence. He next contended that treating the absence period as extra ordinary leave (EOL) without pay adversely impacted the appellant's legal and constitutional rights, including his entitlement to salary and opportunities for promotion, invoking Article 13 of the Constitution of Pakistan against double jeopardy. He further contended that other civil servants in similar situations were compensated and treated as on-duty, advocating for consistency across governmental measures for employees displaced due to conflict. He also argued that forced absence due to such extraordinary circumstances should not penalize civil servants. He next argued that the appellant's efforts at redress through a departmental appeal were made

timely and were necessary, despite claims of being time-barred due to the nature and impact of the decisions being contested. In the last, he argued that the appeal at hand may be accepted as prayed for.

4. On the other hand, the learned Assistant Advocate General for the respondents contended that the appellant failed to formally communicate his inability to be present at work due to insurgency, which implicated a lack of due diligence on the appellant's part as a civil servant. He next contended that the insurgency sufficiently resolved by 2014, therefore, any continued absence beyond that time was voluntary and not warranting forced leave status. He further contended that a lenient view was taken by the respondents by categorizing the absence as EOL, instead of opting for disciplinary actions, aligning with the 'no work, no pay' principle. He next argued that the stagnation in the appellant's promotion was due to his continuous absence rather than institutional malfeasance and that he would be considered for promotion per standard protocols following his rejoining. He further contended that the appellant submitted a departmental appeal in the year 2020 against notifications dated January 19, 2018 and August 7, 2018, rendering it time-barred and thus procedurally untenable. In conclusion, he argued that the appeal in hand may be dismissed being time-barred as well as meritless.

5. We have heard the arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have perused the record.

6. The perusal of the record show that the appellant served as a Medical Officer at a Basic Health Unit located in Sar Kanda, South

02/10/2024

Waziristan, from April 11, 2005, to April 9, 2010. Due to the insurgency and ongoing war against terrorism, the appellant claimed to be unable to work between April 10, 2010 and July 9, 2014. The department issued notifications on January 19, 2018 and August 7, 2018, categorizing the appellant's absence during this time as "Extraordinary Leave without pay." On January 6, 2020, the appellant filed departmental appeal against the aforementioned notifications. The departmental appeal, however, was found to be severely time-barred. The appellant did not submit an application for condonation of delay, which is a required legal step when appealing after the expiration of the prescribed timeframe for appeal. The legal burden was on the appellant to provide a comprehensive explanation and credible evidence justifying the delay for each day, which was not fulfilled. Due to the absence of the condonation of delay application and the failure to comply with procedural requirements, the appeal deemed incompetent. Legal precedents reinforce that failure to adhere to strict timelines results in an appeal being treated as inoperative. Cited cases include 2007 SCMR 513, 2012 SCMR 195, PLD 1990 S.C 951 and 2006 SCMR 453. The Supreme Court of Pakistan has consistently ruled that appeals dismissed on grounds of limitation do not require examination of the case's merits, focusing instead on procedural propriety. Consistent judicial stances have reiterated the importance of adherence to statutory limitations, emphasizing that challenges related to the substance of the case are secondary to procedural compliance. The appellant's continual failure to provide adequate explanations for the


02/10/2024


Service Appeal No.3183/2020 titled "Dr. Muhammad Idrees versus Government of Khyber Pakhtunkhwa, through Secretary Health, Khyber Pakhtunkhwa, Peshawar and others", decided on 02.10.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Ms. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

extensive delays, aligned with established principles in law, led to the conclusion that the departmental appeal is significantly time-barred.

7. In light of the undisputed facts and established legal principles, the appeal is hereby dismissed due to incompetence stemming from non-compliance with limitation periods. 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 02nd day of October, 2024.*


AURANGZEB KHATTAK 02/10/2024
Member (Judicial)


RASHIDA BANO
Member (Judicial)

Naem Amin

18.09.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Written reply/comments received through office, which is placed on file. A copy of the same is handed over to learned counsel for the appellant today, who sought time for submission of rejoinder. He may do so within three days. To come up for arguments on 26.09.2024 before D.B. P.P given to the parties.

(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)


Kaleemullah

26th Sept, 2024

Junior to Mr. Muhammad Asif Yousafzai, Advocate present.
Mr. Muhammad Jan, District Attorney for the respondents present.

Junior Counsel for the appellant seeks adjournment on the grounds that the senior counsel is busy in Peshawar High Court, D.I. Khan Bench. Absolute last chance is given for arguments. To come up for arguments on 02/10/2024 before the D.B. In case the parties fail to argue the case on the next date, the case will be decided on the basis of available record without arguments. Parcha Peshi given to the parties.


(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak)
Member (Judicial)


Naeem Amin

ORDER

02nd Oct, 2024

1. Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal is hereby dismissed due to incompetence stemming from non-compliance with limitation periods. 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 02nd day of October, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak)
Member (Judicial)