

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 1065/2023

Date of presentation of Appeal.....26.04.2023
Date of Hearing.....30.10.2024
Date of Decision.....30.10.2024

Samar Khan, Ex-Warder (BPS-7), Central Prison Peshawar.
.....**Appellant**

Versus

1. Inspector General Prison Khyber Pakhtunkhwa Peshawar.
 2. Superintendent Headquarters Prison Peshawar.
-(**Respondents**)

Present:

Mr. Fazal Shah Mohmand, 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 enlisted as a Constable Warder (BPS-7) at Central Prison Peshawar in 2019. Disciplinary proceedings were initiated against him on allegations of willful absence from duty, starting from 20.09.2021, without permission from the competent authority. Following the conclusion of the inquiry, the appellant was subjected to the major penalty of removal from service vide impugned order dated 18.03.2022. The appellant submitted a departmental appeal on 28.03.2023, which was not responded. Consequently, he approached this Tribunal by filing the present appeal to seek redress for 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 served the department with honesty and dedication since his enlistment in 2019, maintaining an unblemished service record until the events that led to his dismissal. He next contended that the appellant fell ill in 2021 and was subsequently granted a week's leave. He further contended that the doctor advised the appellant bed rest, which prevented him from reporting for duty. He also contended that the appellant submitted his medical certificates through fellow warders Abdul Jalil and Anas Afridi, with his fitness certificate being issued on January 28, 2023. He next argued that the impugned order is illegal and void ab-initio due to the lack of a proper inquiry, the absence of an opportunity for a personal hearing and a failure to notify him in accordance with Rule 9 of the Efficiency and Disciplinary Rules (E&D Rules) 2011. He further argued that no evidence was collected to substantiate the allegations of unauthorized absence, rendering the charges against him invalid. He also argued that the appellant obtained copy of the dismissal order only on January 5, 2023 and subsequently filed a departmental appeal on January 10, 2023. He next added that the absence of the appellant was not willful rather it resulted from serious health issues beyond his control. In the last, he argued that the proceedings related to the appellant absence were conducted without due process, therefore, the impugned order is liable to be set-aside and the appellant may be reinstated in service with all back benefits.


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4. On the other hand, the learned Assistant Advocate General for the respondents contended that the appellant's failure to report for duty after the medical leave constituted willful absence, violating Rules 1082 and 1083 of the Khyber Pakhtunkhwa Prison Rules (2018), which outline the proper protocol for absentees. He next contended that the appellant was appropriately served with an absence notice at his home address but the appellant failed to respond, therefore, a public notice was published in a daily newspaper, affording him ample opportunity to present his case. He further contended that the appellant did not submit a required application to the Superintendent regarding his inability to perform his duties, undermining his argument of adherence to procedural rules. He also contended that all codal formalities were exhausted culminating in the decision to remove him from service due to repeated and unauthorized absence. He next argued that the appellant did not file the departmental appeal within the statutory timeframe, rendering his appeal time-barred. He further argued that the prolonged absence from duty was characterized as serious misconduct, given the responsibilities inherent in his position, emphasizing the necessity for a stern response. In the last, he argued that the appeal in hand being time barred and 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, former Constable Warder (BPS-7) in Central Prison Peshawar, challenged the

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order of his removal from service dated March 18, 2022. According to Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, it was mandated that the appellant was required to file departmental appeal within 30 days following the dismissal order. This stipulates that the deadline for filing such an appeal was set for April 17, 2022. However, the records indicate that the appellant filed his departmental appeal on March 28, 2023, which is substantially beyond the statutory limit. Consequently, this non-compliance renders the appeal procedurally defective. Legal precedent reinforces this position, as illustrated in cases PLD 1990 SC 951, 2006 SCMR 453 and 2007 SCMR 513. These precedents clearly indicate that the departmental appeals submitted beyond the designated timelines are considered non-competent and therefore must be dismissed. Moreover, the ruling in 1987 SCMR 92 by the Supreme Court of Pakistan stipulates that when an appeal is found to be subject to dismissal on the grounds of limitation, there is no necessity to delve into the merits of the case. The appellant, while filing an application for condonation of delay, has contended that he obtained a copy of the impugned order only on January 5, 2023, having made his own efforts. Additionally, the appellant claims that the removal order dated March 18, 2022, is void ab initio. However, it is critical to note that he has failed to provide any legal citations or arguments in support of his assertion that the impugned order dated March 18, 2022 is void. In conclusion, based on the aforementioned legal principles, the substantial delay in filing the

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departmental appeal coupled with the absence of adequate justification for such delay leads this to find the appeal to be time-barred.

7. Consequently, it is held that as the departmental appeal of the appellant is barred by time, therefore, this appeal is dismissed being not competent. 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 30th day of October, 2024.*

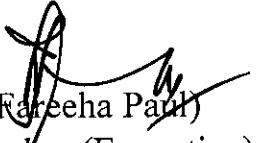


AURANGZEB KHATTAK 30.10
Member (Judicial) 2024.


FAREEHA PAUL
Member (Executive)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1065 of 2023

Samar Khan versus Inspector General Prison Khyber Pakhtunkhwa 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-17 30th October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Fazal Shah Mohmand, Advocate on behalf of the 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, it is held that as the departmental appeal of the appellant is barred by time, therefore, this appeal is dismissed being not competent. 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 30th day of October, 2024.</i></p> <p> (Fareeha Parit) Member (Executive)</p> <p> (Aurangzeb Khattak) Member (Judicial) 30/10 2024.</p> <p>*Naeem Amin*</p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1065/2023

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Samar Khan, Ex-Warder (BPS-7), Central Prison Peshawar.
.....*Appellant*

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1. Inspector General Prison Khyber Pakhtunkhwa Peshawar.
 2. Superintendent Headquarters Prison Peshawar.
-(*Respondents*)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 18.03.2022 WHEREBY, THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.

PRESENT


1. Mr. Fazal Shah Mohmand, 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. Nil
Total	Rs. 100/-	Total	Rs. Nil

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 30th day of October 2024.


Fareeha Paul
Member (Executive)


Aurangzeb Khattak 30/10
Member (Judicial) 2024