

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 467/2022

Date of presentation of Appeal.....28.02.2022
Date of Hearing.....29.10.2024
Date of Decision.....29.10.2024

Syed Kamal Shah No. 1184 (Ex-Constable) presently dismissed from Police Department District Peshawar.**Appellant**

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa at Police Line, Peshawar.
 2. Capital City Police Officer (CCPO) Peshawar
 3. Superintendent of Police (S.P) Police Headquarters, Peshawar.
-(**Respondents**)

Present:

Mr. Asif Khan, 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 while serving as Constable and posted at Police Station Faqirabad, Peshawar was subject to departmental proceedings due to allegations of unauthorized absence from duty from 06.11.2016 to 03.12.2016. Following this, he was transferred to Police Station Kotwali and officially relieved from Faqirabad per Daily Diary No. 24, dated 12.12.2016. However, he again absented himself from duty at Kotwali and failed to appear before the inquiry officer despite repeated summons. Upon conclusion of the inquiry, the appellant was imposed major penalty of dismissal from service vide

impugned order dated 14.11.2018. The appellant then filed departmental appeal on 21.02.2019, which was rejected as time-barred by three months vide impugned order dated 05.04.2019. Subsequently, he submitted a mercy petition on 05.10.2021, which was also rejected vide impugned order dated 26.01.2022. The appellant has now filed the present appeal before this Tribunal seeking 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 discriminated against and denied his due rights as per the Constitution of Pakistan, 1973. He next contended that the appellant's right to earn a livelihood through lawful means is a fundamental right, backed by constitutional as well as historical precedent. He further contended that the impugned orders are illegal, unconstitutional, without authority, and against the norms of justice. He also contended that the appellant was not given a fair chance to be heard, contravening the principles of natural justice that no one should be condemned unheard. 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.

4. On the other hand, the learned Assistant Advocate General for the respondents contended that the appellant had a poor service record with multiple bad entries and punishments due to willful


29/10/2024

absence from duty. He next contended that the appellant was dismissed for a significant period of unauthorized absence (almost two years), following routine charge sheets, enquiries and notifications which the appellant ignored. He further contended that the respondents followed due process, including offering opportunities for defense which the appellant failed to utilize. He next argued that disciplinary actions were taken against the appellant under the Police Rules 1975 (amended in 2014) and the punishment was appropriate given the appellant's conduct and failure to appear for enquiries. He further argued that no constitutional rights of the appellant were violated since all procedures followed were in accordance with legal and departmental rules. He also argued that He further contended that the departmental appeal of the appellant was time-barred, therefore, the appeal in hand is not maintainable. In the last, he argued that the appellant's prolonged, unauthorized absence from a disciplined force was intolerable and justified the severe disciplinary action, therefore, the appeal in hand being lacks merit and time barred 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, while serving at Police Station Faqirabad, faced departmental proceedings due to unauthorized absences from duty between 06.11.2016 and 03.12.2016. After his transfer to Police Station Kotwali on

29/10/2024


12.12.2016, he continued to remain absent and failed to attend inquiry proceedings despite multiple summons. Following the inquiry, the appellant was dismissed from service on 14.11.2018. Under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appellant was required to file a departmental appeal within 30 days of his dismissal order dated 14.11.2018, setting a deadline of 14.12.2018. However, the appellant submitted departmental appeal on 21.02.2019, well beyond the statutory period, rendering the appeal procedurally defective. The departmental appeal of the appellant was rejected on 05.04.2019 as time-barred. So he was required to file service till 05th May, 2019 but he filed his service appeal in February 2022 after delay of about 03 years and 10 months. Legal precedent, as specified in PLD 1990 SC 951, 2006 SCMR 453 and 2007 SCMR 513, confirms that appeals filed beyond prescribed timelines are non-competent and therefore dismissible. In the case law cited 1987 SCMR 92, the Supreme Court of Pakistan held that when an appeal is liable for dismissal due to limitation, its merits need not be examined. The appellant filed an application for condonation of delay, citing his mother's illness as the reason. However, he failed to provide substantial documentary evidence to support this claim. The onus was on the appellant to present cogent evidence to justify the delay, as required by law. In the absence of such documentation, we cannot overlook the statutory limitation period, nor is it authorized to assess the merits of an appeal filed beyond the prescribed time. Therefore, based on established legal principles and the lack of evidence to

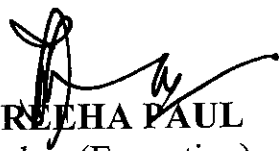

29/10/2024.

condone the delay, we find this appeal to be time-barred and dismiss it on this ground alone, without entering into the merits of the case.

7. Consequently, it is held that as the departmental appeal as well as mercy petition of the appellant was badly time barred, therefore, the appeal in hand being not competent is hereby, dismissed. 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 29th day of October, 2024.*




AURANGZEB KHATTAK
Member (Judicial)


FAREEHA PAUL
Member (Executive)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 467 of 2022

Syed Kamal Shah versus Inspector General of Police, Khyber Pakhtunkhwa at Police Line, Peshawar and 02 others.

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
<u>Order-18</u> 29 th October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Appellant alongwith Mr. Asif Khan, Advocate.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 as well as mercy petition of the appellant was badly time barred, therefore, the appeal in hand being not competent is hereby, dismissed. 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 29th day of October, 2024.</i></p> <p style="text-align: center;"> (Fareeha Paul) Member (Executive)</p> <p style="text-align: right;"> (Aurangzeb Khattak) Member (Judicial) 29/10/2024.</p> <p>*Naeem Amin*</p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 467/2022

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

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO. S/98/22 DATED 26TH JANUARY, 2022 AND ORDER NO. 567/20 DATED 09TH JANUARY, 2020, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN DISMISSED AND THE APPELLANT HAS BEEN DISMISSED FROM SERVICE.

PRESENT


1. Mr. Asif Khan, 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 29th day of October 2024.


Fareeha Paul
Member (Executive)


Aurangzeb Khattak
Member (Judicial) 29/10
2024.