

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 835/2022

Date of presentation of Appeal.....26.05.2022
Date of Hearing.....29.10.2024
Date of Decision.....29.10.2024

Muhammad Shoaib Ex-Recruit Constable No. 688 at TRW Kohat,
R/o Post Office, Samana Hangu.**Appellant**

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. District Police Officer-DPO Hangu.
3. Regional Police Officer, Kohat.

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

Present:

Mr. Sagheer Iqbal Gulbela, 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 was appointed as a Constable in the Police Department on 30.03.2011. Disciplinary proceedings were initiated against him on allegations that, while undergoing Basic Recruit Training at RTW Kohat, he was returned to his parent district as unqualified. Following this, he failed to report to Police Lines, Hangu and deliberately remained absent from duty starting from 05.01.2012 without leave or prior permission, which demonstrated disinterest in his duties and constituted gross misconduct. On conclusion of the inquiry, the appellant was imposed major penalty of dismissal from service vide

impugned order dated 20.06.2012. The appellant filed a departmental appeal on 19.03.2018, which was rejected on 20.04.2022. Subsequently, he filed a revision petition on 08.03.2022, which was also dismissed on 08.05.2022 being time-barred. 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 recruited into the Police Department on 30-03-2011 and completed the Basic Recruit Course at RTW Kohat and returned to his district for a short vacation. He next contended that upon returning home, the appellant was charged under sections 302/324/34 of the Pakistan Penal Code via FIR No. 97 dated 23-12-2011, therefore, due to these charges, he was unable to report back for duty. He further contended that dismissal order of the appellant was procedurally flawed, as no show-cause notice or hearing was provided, therefore, he was dismissed on 20-06-2012 without due process. He also contended that the appellant was acquitted based on a compromise with the complainant on 20-02-2018, which demonstrates his innocence, therefore, following his acquittal, he submitted a departmental appeal, which was inexplicably dismissed on 20-04-2022. He next contended that the absconsion of the appellant was due to the nature of the charges and was an unavoidable situation in his quest for justice. He further cited financial plight of the appellant and the lack of evidence showing his


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guilt. 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 was unqualified from his training due to his absence. He next contended that the appellant involvement in a criminal case was as evidence of misconduct. He further contended that the appellant failure to report back voluntarily and the nature of his acquittal—being based on a financial compromise—do not indicate innocence. He also contended that appropriate departmental proceedings were initiated, fulfilling all legal requirements, including issuing a charge sheet. He next argued that the appellant's departmental appeal and mercy petitions were filed with unexplained delays, thereby making them time-barred under relevant procedural rules. He further argued that the appellant demonstrated behaviors inconsistent with police service standards and should not be reinstated, emphasizing the admission implied in his compromise-based acquittal. In the last, he argued that the appeal in hand may be dismissed with cost being meritless as well as time barred.

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 he appellant, appointed as a Constable on 30.03.2011, faced disciplinary action for failing to report to duty after being deemed unqualified during Basic Recruit Training at RTW Kohat as well as absence without leave from 05.01.2012,


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therefore, he was dismissed from service on 20.06.2012. According to 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 20.06.2012. This legal timeframe, ending on 20.07.2012, was not observed by the appellant, who instead filed his departmental appeal on 19.03.2018, nearly six years beyond the statutory period. While according to the order dated 12-04-2022 passed by the RPO Kohat whereby departmental appeal of the appellant was rejected, the departmental appeal was held time barred by 09 years and 09 months, meaning there that the same was filed in the year 2022. Consequently, his departmental appeal was procedurally defective. Furthermore, the appellant filed a mercy petition on 08.03.2022, which was also rejected on 18.05.2022 as time-barred. Legal precedent affirms that appeals filed beyond prescribed timelines are considered non-competent and therefore dismissible. Key cases cited in this context include PLD 1990 SC 951, 2006 SCMR 453 and 2007 SCMR 513. Furthermore, the Supreme Court of Pakistan in 1987 SCMR 92 held that an appeal subject to dismissal due to limitation does not require examination of its merits. This underscores the principle that timely filing is essential for an appeal to be considered competent. The appellant has though submitted an application for condonation of delay, attributing the delay to his mother's illness. However, he failed to provide substantial documentary evidence to corroborate this claim. The responsibility to provide verifiable evidence justifying the delay rests squarely on the appellant, as per legal requirements. Without such

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documentation, this Tribunal is not authorized to overlook statutory limitations or delve into the merits of a time-barred appeal. Therefore, based on established legal principles and the lack of sufficient evidence to condone the delay, we find the appeal to be time-barred.


7. As regard the contention of learned counsel for the appellant that upon returning home, the appellant was charged under sections 302/324/34 of the Pakistan Penal Code via FIR No. 97 dated 23-12-2011, therefore, due to these charges, he was unable to report back for duty. However, upon examination of the dismissal order and the accompanying records, it is clear that the basis for the appellant's dismissal was not criminal charges. The dismissal order explicitly indicates that the appellant was dismissed from service primarily for two reasons: his unauthorized absence from duty and his return from the Basic Recruit Training Course at RTW Kohat as unqualified. It is also noted that the appellant failed to inform the department about his involvement in the criminal case. Moreover, he has admitted in his departmental appeal that after the registration of FIR he absconded and went into hiding till a compromise was effected with the complainant party where-after he was acquitted on 20-02-2018. There exists a duty of candor and communication required from an employee, especially one in a position of authority like that of a Constable. The appellant's omission to inform the department of his legal situation further exacerbates his failure to fulfill his obligations as a police officer. Such an act of omission signifies a lack of accountability and undermines the trust placed in him by the department. The grounds for dismissal were

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well-founded on unauthorized absence of the appellant and lack of communication regarding his circumstances. In light of these considerations, we find that the dismissal order of the appellant was justified based on the totality of the circumstances.

8. Consequently, it is held that as the appellant's departmental appeal was clearly time-barred, this present appeal is likewise not competent and is hereby dismissed. 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 29th day of October, 2024.*


AURANGZEB KHATTAK 2024.
Member (Judicial)




FAREEHA PAUL
Member (Executive)

Naeem Amin

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 835 of 2022

Muhammad Shoaib versus Inspector General of Police, Khyber Pakhtunkhwa and 02 others.

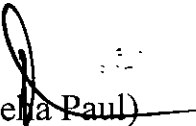
S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p><u>Order-17</u> 29th October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Sagheer Iqbal Gulbela, Advocate on behalf of 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 appellant's departmental appeal was clearly time-barred, this present appeal is likewise not competent and 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;"> (Farzana Paul) Member (Executive)</p> <p style="text-align: right;"> (Aurangzeb Khattak) 29/10 Member (Judicial) 2024</p> <p>*Naeem Amin*</p>

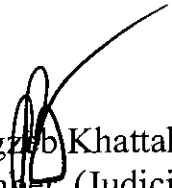
10th Sept, 2024

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned Deputy District Attorney stated that service appeals of similar matters are fixed for arguments on 19/09/2024, therefore, the appeal in hand may also be fixed on the same date. Adjourned. To come up for arguments on 19/09/2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
Peshawar
KPSAT

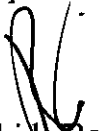

(Fareeha Paul)
Member (Executive)



(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

- 19.09.2024
1. Junior to counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
 2. Junior to counsel for the appellant requested for adjournment on the ground that senior counsel for the appellant is busy before the Hon'ble Peshawar High Court, Peshawar. Last chance is given. To come up for arguments on 29.10.2024 before D.B. P.P given to the parties.

SCANNED
KPSAT
Peshawar
Kaleemullah


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 835/2022

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Muhammad Shoab Ex-Recruit Constable No. 688 at TRW Kohat, R/o Post Office, Samana Hangu.**Appellant**

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa.
 2. District Police Officer-DPO Hangu.
 3. Regional Police Officer, Kohat.
-(**Respondents**)


SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED DISMISSAL ORDER NO. 3279-83/PA DATED 20.06.2012 ISSUED BY THE OFFICE OF RESPONDENT NO. 2, WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AND AGAINST THE IMPUGNED OFFICE ORDER NO. S/1009/22 DATED 18.05.2022 OF THE OFFICE OF INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA, WHEREBY THE REVISION PETITION OF THE APPELLANT WAS TURNED DOWN IN CLASSICAL, CURSORY AND WHIMSICAL MANNER.

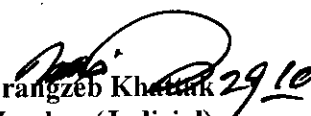
1. Mr. Sagheer Iqbal Gulbela, AdvocateFor appellant
2. Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents

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.


Farzha Paul
Member (Executive)


Aurangzeb Khan
Member (Judicial)
29/10/2024