

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 105/2023

Date of presentation of Appeal.....11.01.2023
Date of Hearing.....02.10.2024
Date of Decision.....02.10.2024

Imrana Ghafoor, Ex-Associate Professor, Higher Education, Archives and Libraries Department, Government of Khyber Pakhtunkhwa, Peshawar. R/o H#13, St #1, Rafi Block, Safari Valley, Phase-8, Bahria Town, Rawalpindi.*Appellant*

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
 2. Secretary, Higher Education Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
-(*Respondents*)

Present:

Mr. Bilal Ahmad Kakaizai, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in her memorandum of appeal, are that she joined the Higher Education Department in May 1999 as Lecturer and reached the post of Associate Professor of Zoology. Her husband, Dr. Shakeel Afridi, disappeared in May 2011 amid allegations of his complicity with foreign agencies, subsequently forcing her and her family to vacate their residence in Hayatabad, Peshawar, following directives from law enforcement agencies due to security concerns. This led to a series of events where she could not continue her duties or

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communicate with her workplace, resulting in her being reportedly absent without leave. The Department issued absence notices in August 2012 and ultimately a removal Notification on 06.02.2015 due to her alleged willful absence. Feeling aggrieved, she preferred departmental appeal on 29.09.2022, which was not responded within the statutory period of 90 days. The appellant has now approached this Tribunal through filing of instant appeal for redressal of her grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. Learned counsel for the appellant contended that the appellant's inability to perform her duties was due to dire security threats following her husband's disappearance, therefore, the appellant was under the strict surveillance of security agencies and was incapable of contacting her department. He next contended that no official notices, including the absence notices or the removal notification, were delivered to the appellant, therefore, the department has no proof of having served or communicated any of these documents. He further contended that the due process was not followed as per Efficiency & Discipline Rules, the appellant should have been provided a full inquiry, where she could explain her circumstances; this was not done. He next argued that the proceedings initiated against the appellant were motivated by malice and had severely impacted her reputation, creating a situation where she was unjustly victimized for circumstances beyond her control. He further argued that the extreme conditions she faced due to the security threats

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warranted a sympathetic consideration of her appeal and the actions of the department were unconscionable given the background.

4. On the other hand, the learned Deputy District Attorney for the respondents contended that the appellant's willful absence from her duties for nearly four months following her placement at the Directorate of Education FATA. He next contended that the Department followed the required protocol, appointing an inquiry officer to investigate. He further contended that the inquiry officer, after making several attempts to contact the appellant at her registered address, reported her absence and recommended removal. He also contended that the publication of absence notices in reputable newspapers, asserting that due diligence was maintained to inform the appellant. He next argued that the appellant did not act promptly by checking on her leave application or her status with the department, therefore, her neglect in this regard led to her procedural loss. He further argued that the decision to remove the appellant, was a justified and lawful action in light of her behavior, which contradicted the expected conduct of a government employee. In the last, he argued that the appellant was removed from service on 06.02.2015 and the appellant filed departmental appeal on 29.09.2022, which is badly time barred, hence, the appeal in hand is liable to be dismissed on this score alone.

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 was removed from service vide Notification dated 06.02.2015 on the allegations of her

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long willful absence from duties with effect from 12.07.2011. The appellant filed a departmental appeal on 29.09.2022, which is significantly outside the statutory period allowed for such appeals. Consequently, the appeal was filed after a lapse of over seven years, without any application seeking condonation for delay. The Supreme Court of Pakistan has established prevailing precedents regarding the timeliness of departmental appeals. Departmental appeal filed after the limits set forth by law cannot be maintained, as affirmed in various precedents such as PLD 1990 S.C 951 and the rulings outlined in 2006 SCMR 453 and 2007 SCMR 513. Additionally, the Supreme Court judgment reported in 1987 SCMR 92 indicates that appeals which are found to be time-barred should be dismissed without delving into their merits, thus underscoring the significance of adherence to procedural timelines. The record clearly indicates that the notification of removal of the appellant was issued on 06.02.2015. Calculating from the date of removal (12.07.2011), the appellant had well over seven years to challenge her removal via departmental appeal. However, the attempt at departmental appeal came nearly eight years later, thus raising significant issues concerning adherence to the legal protocols governing timely departmental appeal. The absence of any application for condonation of delay further exacerbates the situation. It is a general legal practice that if an individual seeks to departmental appeal outside the prescribed period, he is expected to provide justifiable reasons and file an application for condonation of delay. The appellant's omission in this regard reflects a lack of procedural diligence that undermines the


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integrity of her departmental appeal. In line with the cited legal precedents, the Supreme Court has consistently upheld that appeal which does not comply with established limits must be dismissed without addressing the substantive points raised. This principle exhibits a commitment to maintaining order and effectiveness in the judicial and administrative processes. Upon thorough examination of the facts and legal principles pertaining to the appeal, it is clear that the appellant's departmental appeal filed on 29.09.2022 is not maintainable due to being badly time-barred. The absence of a condonation of delay application only reinforces this position.

7. Consequent upon the above discussion, it is held that as the departmental appeal of the appellant was badly time barred, therefore, the instant appeal being not maintainable 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 02nd day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)



RASHIDA BANO
Member (Judicial)

ORDER
02nd Oct, 2024

1. Learned counsel for the appellant present. Ms. Perkha Aziz, Advocate on behalf of official respondents No. 1 & 2 and Mr. Muhammad Arif Firdos, Advocate on behalf of private respondents are present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, it is held that as the departmental appeal of the appellant was badly time barred, therefore, the instant appeal being not maintainable is hereby, dismissed. 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) 02/10
Member (Judicial) 2024.