

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 387/2023

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Ahmad Ali S/O Wali Muhammad R/O Mohallah Tahan Cham, P/O
Lahor Raporay, Tehsil Lahor District Swabi. (*Appellant*)

VERSUS

1. Deputy Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
2. Commandant Frontier Rescue Police, Khyber Pakhtunkhwa Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
....(*Respondents*)

Mr. Muhammad Maaz Madni,
Advocate ... For appellants

Mr. Naseer-ud-Din Shah,
Assistant Advocate General ... For respondents

Date of Institution..... 22.02.2023
Date of Hearing.....30.10.2024
Date of Decision..... 30.10.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974, against the order dated 03.12.2021 passed by respondent No. 1, whereby major punishment of removal from service was imposed upon the appellant, the order dated 25.01.2022 whereby his departmental appeal was rejected and the order dated 09.02.2023, whereby his revision petition was rejected. It has been prayed that on acceptance of the appeal, the impugned

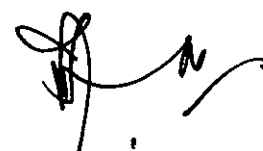


orders dated 03.12.2021, 25.01.2022 and 09.02.2023 might be set aside and the respondents might be directed to reinstate the appellant with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Constable in the Fronter Reserve Police Khyber Pakhtunkhwa, Peshawar. He was charged in FIRs No. 84 & 674 dated 05.02.2020 and 17.09.2021 registered at P.S Chota Lahore u/s 9-C & 9-D CNSA, respectively. The respondents, without waiting for the fate of the trial and without initiating proper inquiry, imposed major penalty of removal from service at his back vide order date 03.12.2021. Feeling aggrieved, he filed departmental appeal/representation before respondent No.2, but the same was rejected vide order dated 25.01.2022. Then he preferred a revision petition to respondent No. 3 which was also rejected vide order dated 09.02.2023; hence the instant service appeal.

03. Respondents were put on notice, who submitted their joint written reply/comments. We heard the learned counsel for the appellant and learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

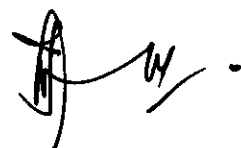
04. Learned counsel for the appellant, after presenting the case in detail, argued that mere FIR was not a guilt unless it was proved but in the instant case, the respondents initiated ex-parte proceedings against the appellant and removed him from service vide order dated 03.12.2021. He argued that the removal of the appellant from service was based on criminal proceedings



wherein the prosecution failed and his bail application was allowed by the Hon'ble Peshawar High Court Peshawar vide order dated 15.10.2021. He argued that no show cause notice was served upon him nor opportunity of personal hearing was afforded to him and he was removed from service without fulfilling the codal formalities. He requested that the appeal might be accepted as prayed for.

05. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant, despite being a member of a disciplined force, involved himself in a criminal case which was heinous in nature. He argued that the appellant was famous for being notorious and involved in criminal activities. He argued that proper departmental inquiry was conducted in which his guilt was fully established and hence he was removed from service by the competent authority. His departmental appeal and revision petition were thoroughly examined and rejected on sound grounds. He requested that the appeal might be dismissed.

06. From the arguments and record presented before us, it transpired that the appellant was removed from service on the basis of FIR No. 674 dated 17.09.2021 U/S 9D CNSA Police Station Chota Lahor and absence w.e.f 12.09.2021 to 21.10.2021, for a period of 38 days, without taking any leave or permission from the competent authority. Against that order, he preferred departmental appeal which was decided on 25.01.2022 after which he submitted a revision petition which was decided on 09.02.2023. A point worth to note here is that his departmental appeal was dismissed on 25.01.2022 after which he was bound to submit service appeal within 30




days but instead of that he preferred an undated revision petition which was decided after more than one year on 09.02.2023. If we take into consideration that a revision petition was preferred by him within 30 days of issuance of rejection of his departmental appeal on 25.01.2022, the appellant was bound under the law/rules to prefer service appeal in the month of March, 2022 but the same was preferred on 22.02.2023 which was badly time barred. The appellant kept mum and slept over his right for a considerable time and the service appeal is, hence, liable to be dismissed on this score alone. Reference is made to the judgment cited as 1997-SCMR-92, wherein it has been stated that where an appeal is to be dismissed solely based on its limitation, a detailed discussion of its merits is not necessary.

07. In view of the above discussion, the appeal in hand is dismissed being time barred. Cost shall follow the event. Consign.

08. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30th day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK) 30/10/2024
Member (J)

MEMO OF COSTS.
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 387/2023

Ahmad Ali S/O Wali Muhammad R/O Mohallah Tahan Cham, P/O Lahor Raporay,
Tehsil Lahor District Swabi. (Appellant)

VERSUS

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2. Commandant Frontier Rescue Police, Khyber Pakhtunkhwa Peshawar.
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....(Respondents)

Mr. Muhammad Maaz Madni,
Advocate

... For appellants

Mr. Naseer-ud-Din Shah,
Assistant Advocate General

... For respondents

Date of Institution..... 22.02.2023
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Appellant	Amount	respondents	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. Services of processes	Rs. Nil	3. Services of processes	Rs. Nil
4. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
5. Security fee	Rs. 100/-	5. Security Fee	Rs. Nil
6. Profess fee	Rs. Nil	6. Process fee	Rs. Nil
7. Costs	Rs. Nil	7. 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 (E)




(AURANGZEB KHATTAK)
Member(J)

Fazle Subhan, P.S

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 387 of 2023

Ahmad Ali Versus Deputy Commandant FRP, Khyber Pakhtunkhwa
Peshawar and two others.

S.No. of Order & Date of proceedings	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
Order-13 30 th October, 2024	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Maaz Madni, Advocate on behalf of the appellant.2. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents. <p>01. Vide our detailed judgment consisting of 04 pages, the appeal in hand is dismissed being time barred. Cost shall follow the event. Consign.</p> <p>02. <i>Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30th day of October, 2024.</i></p> <p> (FAREEHA PAUL) Member (E)</p> <p> (AURANGZEB KHATTAK) Member (J)</p> <p>*Fazle Subhan, P.S*</p>