

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
RASHIDA BANO ... **MEMBER (J)**

Service Appeal No. 470/2022

Date of presentation of Appeal.....29.03.2022
Date of Hearing.....06.11.2024
Date of Decision.....06.11.2024

Mr. Muhammad Iqbal, Ex-Tube Well Operator (BPS-05),
Executive Engineer Irrigation Division-1 Swabi.....(*Appellant*)

Versus

1. The Superintendent Engineer Irrigation, Swabi Circle at Swabi.
 2. The Executive Engineer Irrigation Division-I Swabi at Swabi.
 3. The District Account Officer, District Swabi.
-(*Respondents*)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant
Mr. Naseer ud Din Shah, Assistant Advocate General ..For respondents


JUDGMENT

RASHIDA BANO MEMBER JUDICIAL: The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 13.07.2016 MAY VERY KINDLY BE SET ASIDE AND THE RESPONDENTS MAY KINDLY BE DIRECTED TO RETIRE THE APPELLANT ON 30.09.2017 WITH ALL BACK BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE AWARDED IN FAVOR OF THE APPELLANTS.”



02. Brief facts of the case, as per contents of the appeal, are that the appellant was appointed as a Tubewell Operator in the respondents' department on 20.09.1974. The respondents have recorded the appellant's date of birth as 01.10.1957 in his service book and other service records. This date of birth is also reflected in the appellant's MNIC and CNIC. The correct date of birth, 01.10.1957, is further corroborated by the appellant's school leaving certificate, which is accurate and valid. However, it is astonishing that in the pay slip for December 2013, the respondents unlawfully recorded the appellant's date of birth as 01.01.1954, which appears to be incorrect and illegal. Based on this erroneous entry, the respondents issued the impugned order dated 13.07.2016, prematurely retiring the appellant from service. Feeling aggrieved, the appellant filed a departmental appeal, followed by Civil Suit No: 53/1 of 2014, which was returned by the learned trial court in Swabi via order dated 11.11.2015. The appellant subsequently challenged this order before the District Court, Swabi, but his appeal was dismissed on 13.06.2016, upholding the findings of the learned trial court. On 21.12.2021, the appellant filed a departmental appeal against his premature retirement dated 13.07.2016; however, this appeal has not been responded to and remains undecided beyond the statutory period of 90 days. Consequently, the appellant has filed the present service appeal.



03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claims of the appellant.

04. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal, while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

06. The perusal of record reveals that the appellant, through the instant appeal, seeks pensionary benefits for the period from 31.12.2013 to 30.09.2017, on the grounds that he was prematurely retired by the respondent department via order dated 13.07.2016, prior to reaching the age of superannuation. The appellant asserts that his date of birth, as per his CNIC and school leaving certificate, is 01.10.1957, and not 01.01.1954. In support of this claim, he relies on his Manual National Identity Card (MNIC) and school leaving certificate.

07. It is pertinent to note that the appellant was appointed as a Tubewell Operator through an order dated 20.09.1974, while his MNIC was issued on 15.10.1980, six years after his appointment.

Similarly, the school leaving certificate, which indicates his date



of birth as 01.10.1957, was issued on 05.12.1976 is two years after his appointment. According to the retirement notification, the appellant's date of birth was recorded in the respondent's records as 01.01.1954, which was provided by the appellant at the time of his appointment. This date is accurately reflected in the records of the Accounts Office and on the appellant's salary slip, leading to the cessation of his salary upon reaching the age of superannuation.

08. It is important to highlight that the age of majority in Pakistan is 18 years, which is a prerequisite almost in every department for entry into government service. If we accept the appellant's date of birth as 01.10.1957, he would have been approximately 17 years old at the time of his appointment on 20.09.1974, which is considered the age of minority under Pakistani law. Consequently, a minor cannot be appointed to a public post before attaining the age of majority. Whereas the appellant has not produced any document nor referenced to any rule that a person less than 18 years of age could be appointed particularly in the respondent department.

09. In our humble opinion, the appellant initially represented his date of birth as 01.01.1954 for the purpose of securing his appointment. Subsequently, he obtained his MNIC and school leaving certificate reflecting his age as 01.10.1957. By his own conduct, he is estopped from challenging his recorded date of



birth of 01.01.1954, as this was the basis for his appointment. Had he presented his date of birth as 01.10.1957, he would not have been appointed. Therefore, the appellant is barred by his conduct from pursuing the instant appeal. Moreover the order of retirement for the appellant was issued on 13.07.2016, while he filed the instant appeal on 29.03.2022, which is after a lapse of approximately six years.

10. Therefore, the appeal in hand is not competent in view of the judgment of the Supreme Court of Pakistan in 2007 SCMR 513 titled "Muhammad Aslam Vs. WAPDA and others", wherein, the Apex Court has held that:

"If departmental appeal was not filed within the statutory period, appeal before Service Tribunal would not be competent. Civil Servant was non-suited for non-filing of appeal within time, therefore, Supreme Court declined to interfere with the judgment passed by Service Tribunal. Leave to appeal was refused."

11. Furthermore, Section-4 of the Service Tribunal Act, 1974 also gives the period for filing departmental appeal as thirty days.

The same is reproduced below:

"4. Appeal to Tribunals.--- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in

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respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an appeal of the Tribunal having jurisdiction in the matter: Dismissed"

12. For what has been discussed above, we are unison to dismiss the instant service appeal being devoid of merits and also being barred by time, the same is dismissed accordingly. Costs shall follow the event. Consign.

13. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 06th day of November, 2024.*



KALIM ARSHAD KHAN
CHAIRMAN



RASHIDA BANO
Member (Judicial)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.470/2022

Date of presentation of Appeal	29.03.2022
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Mr. Muhammad Iqbal, Ex-Tube Well Operator (BPS-05), Executive Engineer Irrigation Division-I Swabi. ... (Appellant)

Versus

1. The Superintendent Engineer Irrigation, Swabi Circle at Swabi.
2. The Executive Engineer Irrigation Division-I Swabi at Swabi.
3. The District Account Officer, District Swabi.

... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE DATED 13.07.2016, WHEREBY THE RESPONDENT NO.2 PREMATURELY RETIRED THE APPELLANT W.E.F 31.12.2013 INSTEAD OF W.E.F. 30.09.2017 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRESENT

1. Mr. Noor Muhammad Khattak, Advocate for the appellant
2. Mr. Naseer ud Din Shah, Assistant Advocate General for the 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 6th day of November, 2024.



(KALIM ARSHAD KHAN)
CHAIRMAN



(RASHIDA BANO)
Member (J)



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 470/2022

Muhamamd Iqbal

Versus

Govt. of Khyber Pakhtunkhwa

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-21 6th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Noor Muhammad Khattak, Advocate, for appellant present.2. Mr. Naseer ud Din Shah, Assistant Advocate General, for the respondents present.3. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being devoid of merits and also being barred by time, the same is dismissed accordingly. Costs shall follow the event. Consign.4. <i>Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 6th day of November, 2024.</i> <p> (KALIM ARSHAD KHAN) CHAIRMAN</p> <p> (RASHIDA BANO) MEMBER (J)</p> <p>*M.KHAN*</p>