

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 95/2024

Date of presentation of Appeal.....08.01.2024
Date of Hearing.....11.11.2024
Date of Decision.....11.11.2024

Shakir Ahmad, Ex-IHC No. 401, Kot Police Lines, Hangu.
.....**Appellant**

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. The Regional Police Officer, Kohat Region, Kohat.
 3. The District Police Officer, Hangu.
-**(Respondents)**

Present:

Mr. Taimur Ali Khan, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant, Shakir Ahmad Ex-IHC, was appointed as a Constable in the respondent department in the year 2004. Disciplinary proceedings were initiated against him on the allegations that he has not been obeying the valid legal orders of the DPO/Respondent No. 03 and has thus committed gross misconduct. On conclusion of the departmental proceeding, the appellant was found guilty and awarded major punishment of dismissal from service vide impugned order dated 20.02.2023. Feeling aggrieved, the appellant filed departmental appeal on 06.03.2023, which was rejected on

11/11/2024

12.04.2023. The appellant also filed revision petition before the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar (undated) which was also rejected vide impugned order dated 22.12.2023. The appellant has now instituted the instant service appeal before this Tribunal for 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 dismissal order dated 20.02.2023 and subsequent rejections of departmental appeals and revisions dated 12.04.2023 and 22.12.2023 respectively, are unlawful, unjust, and in violation of principles of fairness. He next contended that the inquiry was biased, which led to a lack of impartiality in the proceedings. He further contended that the appellant was denied a fair chance to defend himself, as statements of witnesses were not recorded in presence of the appellant, nor was he permitted to cross-examine witnesses. Furthermore, he was confined to the Quarter Guard during the inquiry, making it impossible for him to participate effectively. He also contended that charge sheet was issued to the appellant on 08.02.2023 and he submitted his reply on 13.02.2023, and an inquiry report was submitted the same day, which was followed by an immediate show-cause notice, therefore, the sequence of events highlights the hurried nature of the proceedings, depriving the appellant of justice. He next argued that respondent No. 3, who initiated the complaint, also played a decisive role in the disciplinary

*Amir
11/11/2024.*

action against the appellant, thus violating the principle that no one should be a judge in his own case. He further argued that the alleged misconduct arose only because the appellant requested a formal order when directed to take charge of Wardi Godown. The punishment of dismissal, despite the appellant's unblemished 19-year record, was disproportionate and unfair, resulting from a minor administrative request. He also argued that the appellant was condemned unheard, deprived of a fair trial as required by Article 10-A of the Constitution, and was not provided with a fair opportunity to prove his innocence. 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 at the very outset, learned Deputy District Attorney pointed out the appeal is badly time barred because departmental appeal was rejected on 12.04.2023 and the service appeal was filed on 08.01.2024. He contended that the appellant demonstrated repeated disobedience, indiscipline and unprofessional conduct, especially in his interactions with Respondent No. 3. He next contended that the appellant's conduct justified departmental proceedings, which were conducted in accordance with due process and the Police Rules of 1975, as amended in 2014. He further contended that the inquiry was conducted fairly and impartially. He also contended that the inquiry process involved a statement of allegations, a charge sheet, the appellant's replies and personal hearings. He next argued that the inquiry officer also recorded

statements from all relevant officers acquainted with the appellant's misconduct, fulfilling all procedural requirements. He further argued that the appellant was given ample opportunity to defend himself but he failed to prove his innocence. He also argued that the appellant was issued show-cause notice and was heard in person multiple times but he failed to present convincing evidence in his favor. In the last, he argued that the behavior of the appellant was inconsistent with the standards required of a police officer and his repeated defiance of authority warranted the dismissal, therefore, the appeal in hand is liable to be dismissed.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The record shows that the appellant was imposed major penalty of dismissal from service vide impugned order dated 20.02.2023. The appellant challenged the same by way of filing departmental appeal on 06.03.2023, which was rejected on 12.04.2023. Section-4 of Service Tribunal Act, 1974, which is very crucial for resolution of the instant appeal and the same reproduced as below for ready reference:-

Any civil servant aggrieved by any final order, whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him 4[or within six months of the establishment of the appropriate Tribunal, whichever is later], prefer an appeal to the Tribunal having jurisdiction in the matter:


7. The original order in the instant appeal is dated 20.02.2023 and the order of departmental authority is dated 12.04.2023. Therefore, under the Section 4 of this Tribunal Act, 1974, the appellant was required to have filed service appeal before this Tribunal by 12.05.2023. However, the appellant filed the instant service appeal on 08.01.2024, which is well beyond the prescribed limitation period. It is noteworthy that the appellant filed revision petition before the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar (undated), which was subsequently dismissed vide order dated 22.12.2023. However, a careful review of Section 4 of the Tribunal Act, 1974, indicates no provision for filing a revision petition as an alternative or supplement to the statutory appeal process within the specified timeframe. The Service Tribunal Act, 1974, does not recognize the right to file a revision petition as a substitute for or extension of the appeal period; therefore, the revision petition filed by the appellant does not serve to extend or toll the statutory limitation period. The Supreme Court of Pakistan in its judgment reported as 2017 SCMR 8, held that the question of limitation should not be treated as a mere technicality. Rather, the limitation period has substantial implications on the merits and admissibility of a case. This Tribunal's jurisdiction to examine the merits of a case is conditional upon the filing of an appeal within the statutorily prescribed period. Furthermore, in 1987 SCMR 92, the Supreme Court reiterated that when an appeal is required to be dismissed on the ground of limitation, its merits need not to be discussed. Based on the above analysis and in light of the statutory


11/11/2024

requirements and precedents set by the Supreme Court, the Tribunal finds that the appellant's appeal is indeed time-barred and cannot proceed on its merits.

8. Accordingly, the instant appeal stands dismissed due to the bar of limitation. 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 11th day of November, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


FAREEHA PAUL
Member (Executive)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 95/2024

Date of presentation of Appeal 08.01.2024
Date of hearing 11.11.2024
Date of Decision 11.11.2024

Shakir Ahmad, Ex-IHC No. 401, Kot Police Lines, Hangu.

.....**Appellant**

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region, Kohat.
3. The District Police Officer, Hangu.

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


PRESENT


1. Taimur Ali Khan, Advocate.....For appellant
2. Mr. Asif Masood Ali Shah, Deputy District AttorneyFor 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 11th day of November 2024.

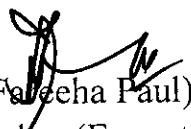


Fareeha Paul
Member (Executive)


Aurangzeb Khattak 11/11
Member (Judicial) 2024.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 95/2024

Shakir Ahmad versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 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>Order-06 11th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Appellant alongwith Mr. Taimur Ali Khan, Advocate.2. Mr. Asif Masood Ali Shah, Deputy District Attorney, on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the instant appeal stands dismissed due to the bar of limitation. 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 11th day of November, 2024.</i></p> <p style="text-align: center;"> (Faheeha Paul) Member (Executive)</p> <p style="text-align: right;"> (Aurangzeb Khattak) Member (Judicial) 11/11/2024</p> <p>*Naeem Amin*</p>