

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT, SWAT.

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

Service Appeal No. 283/2024

Date of presentation of Appeal.....19.02.2024
Date of Hearing.....06.11.2024
Date of Decision.....06.11.2024

Hayat Muhammad (SI) No. 62/M Department of Police District Dir Lower, Son of Saeed Wali, Resident of Kandow Bagh, Dushkhel, Ojala, Tehsil Timergara, District Dir Lower.....**Appellant**

Versus

1. Inspector General of Police/Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Malakand Region, Saidu Sharif, Swat.
3. SP Investigation District Dir Lower at Timergara.
.....(**Respondents**)

Present:

Mr. Muhammad Javaid Khan, Advocate.....For appellant
Mr. Umair Azam, Additional Advocate GeneralFor respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case are that disciplinary proceedings were initiated against the appellant based on allegations of his involvement in criminal cases, specifically F.I.R. No. 38 dated May 25, 2020, under sections 324/148/149/337-D/337-F(III)(V) of the Pakistan Penal Code (PPC), registered at PS Talash and F.I.R. No. 39 dated May 25, 2020, under section 15-AA of the PPC, also at PS Talash. The appellant was convicted by the Additional Sessions Judge of Dir Lower on February 11, 2021. Subsequently, based on this judgment, the appellant was

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removed from service vide impugned order dated March 22, 2021. The appellant challenged his convictions before the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, where the convictions were partially upheld and modified in the case of F.I.R. No. 38 through a judgment dated May 3, 2021. He was also acquitted in the case of F.I.R. No. 39 via a judgment dated November 22, 2022. His conviction was upheld by the august Supreme Court of Pakistan. However, later on he was acquitted by the trial court under section 338 E (2) PPC on the basis of compromise. Following his acquittal in the criminal cases, the appellant filed a departmental appeal, which was accepted through an order dated January 13, 2023, resulting in his reinstatement in service with immediate effect, as a lenient approach was taken by the Regional Police Officer, Malakand Region, Swat. The appellant then filed a revision petition requesting the grant of salaries, back pay and restoration of seniority for the period he was out of service; however, his revision petition was rejected on January 22, 2023. The appellant has now filed the instant service appeal before this Tribunal, seeking the grant of salaries, back pay and the restoration of seniority for the duration of his absence from service.

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 fundamental rights guaranteed under Articles 4, 11, 29 and 25 of the Constitution of the Islamic Republic of Pakistan have been infringed. He next contended that the respondents failed to treat the appellant in accordance with established laws, rules and policies, acting in an unjust


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and unfair manner that is unsustainable in law. He further contended that throughout the period of removal, the appellant has not received any back benefits or seniority, which deprives him of his constitutional rights and constitutes a denial of due process. He also contended that the respondents acted without lawful authority and their actions amount to a misuse and arbitrary exercise of power. As such, these actions are considered void ab-initio and ineffective regarding the appellant's rights. He next argued that it is a fundamental legal principle that no individual should be penalized without just cause. The appellant's financial hardships further compound this injustice. He further argued that the appellant has been though reinstated but he has been unjustly denied back benefits. The principle of reformatory justice should lead to reparation for wrongful deprivation of earnings, which the orders of the respondents do not support. He also argued that the appellant did not engage in other employment during his period of removal, reinforcing his entitlement to the salaries and benefits for that time, supported by judgments from superior courts. He next added that the respondents' orders are arbitrary and lack substantive reasoning, breaching the principle of accountability and clarity required in judicial decisions, as affirmed by prior judgments. He further added that ultimately, justice dictates that the appellant be reinstated with all entitlements, as the competent authority acted hastily and without sufficient investigation into the matter. He also added that it is evident that the actions of the respondents were arbitrary, unjust and in violation of constitutional directives, therefore, the appellant deserves not only reinstatement but also the full restoration of his back benefits.


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In the last, he argued that the appeal in hand may be accepted as prayed for.

4. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant, while serving as a Reader, was charged with serious offenses under FIRs No. 38 & 39/20, as evidenced by ocular witnesses and recovery of the weapon. The conviction was maintained up to the Supreme Court despite appeals. He next contended that following the conviction, a departmental inquiry found the appellant guilty, leading to his removal based on misconduct and the charges raised. This was done following due process. He further contended that despite exhausting judicial avenues with convictions upheld by higher courts, the appellant eventually secured acquittal through a compromise. His departmental appeal resulted in reinstatement with a censure, but without back pay. He also contended that the appellant did not perform any duty during his period of removal, therefore, on the principle of "no work no pay", appellant is not entitled for back benefits, as the reinstatement does not automatically warrant retroactive pay. He next argued that the actions of the respondents are within legal and constitutional boundaries. The decision to deny back pay is consistent with existing laws and regulations regarding employment and pay. He next argued that the procedural handling of the case, including the appeal and subsequent reinstatement, adhered to lawful standards and principles of natural justice, with no arbitrary misuse of power by the respondents. He further argued that the appellant's case is distinct due to his direct

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involvement and conviction in a criminal case, which justifies the denial of back benefits and differentiates it from cases where individuals might be penalized for others' actions. He also argued that the respondents acted within their jurisdiction and followed prescribed rules and regulations throughout the proceedings, reaffirming the legality and fairness of their decisions. In the last he argued that the revision petition of the appellant was rejected on January 13, 2023 and he filed the instant appeal on February 19, 2024, which is badly time barred and 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 case file would show that the appellant, on May 25, 2020, became embroiled in a criminal case (F.I.R No. 38) under multiple sections of the Pakistan Penal Code (PPC), including serious charges such as attempted murder. Following the incident, another F.I.R (No. 39) was filed against him under the Khyber Pakhtunkhwa Arms Act. The appellant was subsequently convicted by the Additional Sessions Judge, Dir Lower, on February 11, 2021. As a consequence, he was removed from service vide order dated March 23, 2021. The appellant challenged the conviction in the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat which led to a partial acceptance and his sentence was reduced, and some convictions were overturned. The said judgment/conviction of upheld by the august Supreme Court of Pakistan. Ultimately, a compromise was reached with the complainant leading to his acquittal on November 22, 2022 under section 338 E (2) by the trial court. After acquittal, the appellant filed

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departmental appeal, which was accepted vide order dated 13.01.2023 and the penalty of removal from service was converted into censure and he was reinstated in service with immediate effect by Regional Police Officer, Malakand Region Swat. The appellant there-after also filed revision petition for grant of salaries, back pay and restoration of seniority for the period he was out of service, however, his revision petition was rejected on January 22, 2023. The appellant was legally required to have challenged the same by way of filing of service appeal within a period of 30 days of communication of such order, however he has filed the instant appeal on February 19, 2024 i.e after a lapse of about one year, therefore, the instant service appeal of the appellant is time barred. The appellant has not even bothered to file an application for condonation of delay. It is well settled that law favours the diligent and not the indolent. The appellant remained indolent and did not agitate the matter before the Service Tribunal within the period prescribed under the relevant rules. August Supreme Court of Pakistan in its judgment reported as PLD 2015 SC 212 has held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing


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for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself."

7. This Tribunal can enter into merits of the case only, when the appeal is within time. Worthy Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation, its merits need not to be discussed.

8. Consequently, the appeal in hand stands dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Camp Court, Swat and given under our hands and the seal of the Tribunal on this 06th day of November, 2024.*


AURANGZEB KHATTAK *06/11/2024*
Member (Judicial)
Camp Court, Swat


FAREEHA PAUL
Member (Executive)
Camp Court, Swat

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT,
SWAT.

Service Appeal No. 283/2024

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1. Inspector General of Police/Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
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3. SP Investigation District Dir Lower at Timergara.
.....**(Respondents)**


PRESENT

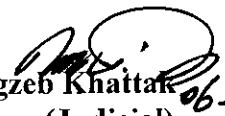
1. Mr. Muhammad Javaid Khan, Advocate.....For appellant
2. Mr. Umair Azam, Additional Advocate GeneralFor respondents

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 06th day of November 2024.

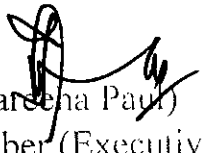
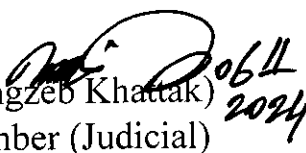

Farzana Pami
Member (Executive)
Camp Court, Swat


Aurangzeb Khattak 06/11/2024
Member (Judicial)
Camp Court, Swat

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 283 of 2024

Hayat Muhammad versus Inspector General of Police/Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar 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>Order-08 06th November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Appellant alongwith Mr. Muhammad Javaid Khan, Advocate.2. Mr. Umair Azam, Additional Advocate General on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the appeal in hand stands dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><i>Pronounced in open Court at Camp Court, Swat and given under our hands and the seal of the Tribunal on this 06th day of November, 2024.</i></p> <p style="text-align: center;"> (Fareeha Paul) Member (Executive) Camp Court, Swat</p> <p style="text-align: center;"> (Aurangzeb Khattak) Member (Judicial) Camp Court, Swat</p> <p>*Naeem Amin*</p>