

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT, SWAT.

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

Service Appeal No. 1889/2022

Date of presentation of Appeal.....21.12.2022
Date of Hearing.....06.11.2024
Date of Decision.....06.11.2024

Muhammad Afzal Son of Amir Salam Khan, R/o Mohallah Bunr,
Mingora, Tehsil Babozai, District Swat**Appellant**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education at Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa at Peshawar.
3. District Education Officer (Male) Swat.
.....(**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, as outlined by the appellant in his memorandum of appeal, are that he was initially appointed as a Junior Clerk on September 5, 1985, and was subsequently promoted to Senior Clerk on June 17, 2008. He was optimistic about his promotion to the post of Assistant based on his seniority number, 299, on the list.. However, the Departmental Promotion Committee meeting was delayed and ultimately held on November 27, 2019, after his retirement on April 4, 2019. During this meeting, the appellant was not considered for promotion, while some of his juniors were promoted vide notification dated December 10, 2019.

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Feeling aggrieved, he filed a departmental appeal on August 8, 2020, which was not addressed promptly, leading him to file a writ petition on November 11, 2020. The High Court ruled on October 26, 2021, directing Respondent No. 1 to decide the appellant's departmental appeal/representation in accordance with the law within one month. However, Respondent No. 1 did not decide on the appeal within this timeframe, prompting the appellant to file a contempt petition. During the contempt proceedings, an impugned notification dated October 25, 2022, was issued, dismissing the appellant's departmental appeal/representation. The appellant has now filed the present appeal before this Tribunal, seeking redressal for 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 appellant fulfilled all requirements timely and should have been considered for a notional promotion. He next contended that delays in the promotion committee meetings were due to the respondents, not the appellant and should not disadvantage him. He further contended that the notification disregarded the established legal norms and was unilaterally decided without hearing the appellant. He next argued that promoting juniors while ignoring the appellant, who had a legitimate claim, was unjust and contrary to judicial precedents. In the last, he argued that the appeal in hand may be accepted and the appellant may be granted notional promotion on the post of Assistant (BPS-16) from the date of eligibility or 09.02.2019.

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 seniority alone does not assure promotion; recommendations from the Departmental Promotion Committee based on seniority-cum-fitness are required. He next contended that since the appellant had retired before the DPC meeting, therefore, he was ineligible for promotion per the existing regulations and procedural framework. He further contended that the appellant's retirement on April 4, 2019 rendered him non-eligible for consideration, unlike his colleagues who were in service. He also contended that procedural requirements according to the KP Civil Servants (Appointment, Promotion and Transfer) Rules 1989 were followed, making the appeal meritless. In the last, he argued that as the departmental appeal and service appeal of the appellant are time barred, therefore, the appeal in hand is not maintainable 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 was initially appointed as a Junior Clerk in 1985 and was promoted to Senior Clerk in 2008. According to the appellant, in 2018, he was eligible for a further promotion to the position of Assistant (BPS-16). However, the Departmental Promotion Committee (DPC) meeting, was delayed, allegedly without justification and he was retired from service on April 4, 2019. Subsequently, a DPC meeting was held on November 27, 2019, after his retirement. During this meeting, several colleagues,

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including those junior to him, were promoted to the post of Assistant
vide Notification dated December 10, 2019. According to Section-4 of
the Khyber Pakhtunkhwa Service Tribunal Act, 1974, if the appellant
was aggrieved from the Notification dated December 10, 2019, he was
required to have submitted a departmental appeal within 30 days of this
date to challenge the order. However, he filed the departmental appeal
after a significant delay on August 8, 2020. It is noted that the
departmental authority did not respond to the departmental appeal of
the appellant within the statutory 90-day period, as prescribed under
service law. Rather than filing a service appeal before this Tribunal
once the department failed to respond, the appellant filed Writ Petition
No. 1266-M/2020 before the Peshawar High Court, Mingora Bench
(Dar-ul-Qaza), Swat. On October 26, 2021, the High Court issued a
directive to Respondent No. 1 to decide the appellant's departmental
appeal in accordance with the law, within one month. Despite the High
Court's direction, the appellant's departmental appeal was ultimately
rejected on October 25, 2022. The appellant, dissatisfied with this
outcome, filed the present service appeal before this Tribunal on
December 21, 2022. It is observed, that this service appeal is filed
beyond the permissible timeframe and is therefore time-barred. The law
is clear that delays in pursuing a remedy cannot be condoned merely
because a petitioner has mistakenly pursued before wrong forum. This
principle is upheld in the case law of *PLD 2016 Supreme Court 872*,
which establishes that the time consumed while pursuing a remedy
before wrong forum does not toll or excuse the statutory period of
limitations. The appellant was obligated to justify the delay by

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explaining the reasons for every day of delay in his application for condonation. But no sufficient cause or explanation was provided in the appellant's application to account for this delay. The appellant's failure to file his appeals within the prescribed periods, first for the departmental appeal and subsequently for the service appeal, has led to the appeals being struck by the bar of limitation. Furthermore, Supreme Court of Pakistan, in its judgment reported as *2015 SCMR 165*, has expressly stated that once the limitation period for filing a departmental representation has lapsed, the representation will be rendered incompetent. The absence of a valid justification or sufficient reason for the delay in submitting the departmental representation is a critical factor. If no substantive reason is provided, the individual loses the opportunity to establish the legitimacy of their late filing. It is established that a subsequent order disposing of a time-barred departmental representation does not create a fresh cause of action. Such orders merely affirm the original incompetency without addressing the core issue of timeliness. Moreover, the august Supreme Court of Pakistan, in *1987 SCMR 92*, has expressly held that where an appeal is barred by limitation, the court need not discuss its merits. In view of the appellant's non-compliance with statutory timelines and the absence of a reasonable justification for delay, his appeal is liable to be dismissed on grounds of limitation without delving into their substantive merits.

7. Accordingly, the appeal is dismissed due to the statutory bar of limitation. The appellant's claims are thus denied, as they are barred by



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established service laws and precedents. Parties are left to bear their own costs. File be consigned to the record room.

8. *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
Member (Judicial)
Camp Court, Swat

06/11/2024.


FAREEHA PAUL
Member (Executive)
Camp Court, Swat

Naeem Amin

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

Service Appeal No. 1889/2022

Date of presentation of Appeal 21.12.2022
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Muhammad Afzal Son of Amir Salam Khan, R/o Mohallah Bunnr,
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3. District Education Officer (Male) Swat.
.....(**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.




Fareeha Paul
Member (Executive)
Camp Court, Swat


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

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1889 of 2022

Muhammad Afzal versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education at 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
<u>Order-15</u> 06 th November, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Appellant alongwith Mr. Muhammad Javaid Khan, Advocate.2. Mr. Umair Azam, Additional Advocate General assisted by Mr. Hussain Ali, ADEO (Litigation) with authority letter on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the appeal is dismissed due to the statutory bar of limitation. The appellant's claims are thus denied, as they are barred by established service laws and precedents. 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> <div style="display: flex; justify-content: space-around; align-items: flex-end;"><div data-bbox="558 2012 877 2242" style="text-align: center;"><p>(Fareeha Pail) Member (Executive) Camp Court, Swat</p></div><div data-bbox="1101 2038 1532 2242" style="text-align: center;"><p>(Aurangzeb Khattak) Member (Judicial) Camp Court, Swat</p></div></div> <p style="text-align: left; margin-top: 20px;">*Naeem Amin*</p>