

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Ayesha A. Malik, JJ**Dr. SAYYID A. S. PIRZADA---Petitioner****Versus****The CHIEF SECRETARY, SERVICES AND ADMINISTRATION DEPARTMENT****and others---Respondents**

Civil Petition No. 2009 of 2020, decided on 13th April, 2023.

(Against the judgment of the Punjab Service Tribunal, Lahore, dated 10. 12.2019 passed in Appeal No. 243 of 2008)

Punjab Service Tribunals Act (IX of 1974)---

----Ss. 4(1)(a) & 5(1)---Appeal filed before the Service Tribunal after departmental authority fails to decide representation within 90 days---Service Tribunal, powers of---Scope---Once the appeal, application of review or representation, as the case may be, of a civil servant is not decided by the departmental authority within a period of 90 days and he has elected to approach the Tribunal through preferring an appeal after lapse of that period, then his appeal has to be decided on merits and the Tribunal cannot dispose of that appeal by issuing direction to the departmental authority to decide the appeal, application for review or representation of the appellant, because the said remedy already stands exhausted by virtue of the lapse of time.

If the departmental appeal, review or representation of a civil servant is not decided within a period of 90 days, the aggrieved civil servant need not endlessly wait for the decision of the departmental appeal, review or representation and can straight away approach the Tribunal by filing an appeal for the redressal of his grievance. The Punjab Service Tribunals Act, 1974 ('the Act') encourages a civil servant to first avail the remedy of departmental appeal, review or representation so that the matter can best be decided at the departmental level. However, if no progress is made on such departmental remedy within 90 days, the Act provides the civil servant with a higher remedy in the shape of an appeal before the Tribunal to agitate his grievance. When the aggrieved civil servant avails the higher remedy of appeal before the Tribunal after lapse of the prescribed period of 90 days, the departmental remedy of appeal, review or representation loses its significance and automatically comes to an end. Once the matter is brought before the Tribunal in accordance with the provisions of section 4 of the Act, the departmental remedy stands exhausted. Under section 5 of the Act, the Tribunal on appeal can only confirm, set aside, vary or modify the order appealed against. The Tribunal has no power under the Act to direct the departmental authorities to decide the departmental appeal, application for review or representation of the civil servant, which remained undecided for a period of 90 days.

Falak Sher v. Government of Punjab 1995 SCMR 962 ref.

Once the appeal, application of review or representation, as the case may be, of a civil servant is not decided by the departmental authority within a period of 90 days and he has elected to approach the Tribunal through preferring an appeal after lapse of that period, then his appeal has to be decided on merits and the Tribunal cannot dispose of that appeal by issuing direction to the departmental authority to decide the appeal, application for review or representation of the appellant, because the said remedy already stands exhausted by virtue of the lapse of time.

Petitioner in person.

Sanaullah Zahid, Additional A.G., Punjab, M. Safdar Abbasi, N.S., Waqar Malik, L.A. and Riaz Ahmed Muazzmi, Law Officer HED for Respondents.

Date of hearing: 13th April, 2023.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---This case has a somewhat chequered history. The petitioner filed a service appeal in the year 2008 under section 4 of the Punjab Service Tribunals Act 1973 ("Act"), agitating the question of his "promotion" before the Punjab Service Tribunal ("Tribunal"). Instead of deciding the appeal of the petitioner on merits, the Tribunal vide its order dated 27.03.2008 directed that the departmental representation filed by the petitioner before the Chief Secretary, Government of Punjab be decided first. The

Tribunal in the same order reserved the right of the petitioner to file a fresh appeal, if any adverse order is passed against him on that representation, and disposed of the appeal as not pressed.

2. As the representation of the petitioner was not decided despite direction of the Tribunal, the petitioner filed an application for restoration of the said appeal, which was allowed by the Tribunal and the appeal was restored vide order dated 29.06.2011. The said order was not challenged by the respondents and attained finality. Thereafter, the appeal remained pending before the Tribunal till 2019 when through the impugned order dated 10.12.2019 the Tribunal held that the service appeal of the petitioner was not maintainable as it stood disposed of in the year 2008 and could not have been restored.

3. We have heard the petitioner and the learned Additional Advocate-General for the respondents, and examined the record of the case.

4. At the very outset, the attention of the learned Additional Advocate-General has been drawn to order dated 29.06.2011 passed by the Tribunal whereby the service appeal of the petitioner was restored. The said order was not challenged by the respondents and therefore had attained finality. Learned Additional Advocate-General has had no plausible explanation to render in defense of the impugned order. He, however, has drawn the attention of the Court to an important legal issue that not only arises in the instant case but also is a matter of concern in many other cases decided by the Tribunal. He submits that under the Act the Tribunal can only decide the service appeals filed before it but instead of deciding the appeals on merits, the Tribunal has, as in the instant case, started directing the departmental authorities to decide the pending departmental appeals, applications for review and representations of the civil servants and with such directions, the appeals are being disposed of. According to the learned Additional Advocate-General, once a civil servant approaches the Tribunal after his departmental appeal, review or representation remains unattended for a period of 90 days, the Tribunal can only decide the appeal and cannot direct the departmental authorities to decide the pending appeal, review or representation, as the case may be. Any such direction, he argues, offends the object of the Act as it delays adjudication of service matters of the civil servants, which the Act in the first instance aims to remedy.

5. Article 212 of the Constitution of the Islamic Republic of Pakistan ("Constitution") authorizes the appropriate legislature to provide for establishing the Administrative Tribunals to exercise exclusive jurisdiction relating to matters pertaining to the terms and conditions of persons in the service of Pakistan. Under the said constitutional provision, the jurisdiction of the regular courts stands barred to entertain such matters. The purpose and object of establishing an Administrative Service Tribunal is to keep the matters of persons in the service of Pakistan out of the regular courts to provide them with a more efficient and specialized forum for the speedy resolution of the disputes arising from the terms and conditions of their service. Efficient dispute resolution system within the civil bureaucracy is a key to good and effective administration. The Tribunals strive to provide an efficient and timely resolution of disputes. They enjoy specialized knowledge and expertise in public service matters, which can lead to quicker and more accurate decision-making. The Tribunals provide an accessible, fair, and efficient system for resolving disputes arising from public service employment. They ensure consistency and transparency, and maintain high standards in the public service sector. Additionally, efficient dispute resolution of civil servants through service tribunals is important for maintaining employee morale and productivity, enhancing government credibility, strengthening institutional capacity, reducing the burden on the judiciary and preventing the escalation of conflicts. These factors collectively contribute to better governance and administration within the Government. Thus, an efficient dispute settlement mechanism through an Administrative Service Tribunal is necessary for civil servants to maintain public trust in the civil service, and ultimately contributes to the overall effectiveness and efficiency of the Government.

6. The constitutional mandate of an Administrative Service Tribunal has been actualized through sections 4 and 5 of the Act, which are reproduced here for ease of reference:

4. Appeal to Tribunals.---(1) 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 or within six months of the establishment of the appropriate Tribunal, whichever is latter, prefer an appeal to the Tribunal.

Provided that-

(a) where an appeal, review or representation to a departmental authority is provided under the Punjab Civil Servants Act, 1974, or any rules against any such order no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was so preferred;

(b) ...

5. Powers of Tribunals.---(1) A Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against.

(2) ...

As per section 4 of the Act, the right to prefer an appeal to the Tribunal can be invoked subject to the fulfilment of two pre-conditions: (i) in case a departmental appeal, review or representation is provided under the law, no appeal to the Tribunal shall lie unless such a remedy is availed by the aggrieved civil servant; and (ii) a period of 90 days has elapsed since such departmental appeal, review or representation has been preferred. Therefore, if the departmental appeal, review or representation of a civil servant is not decided within a period of 90 days, the aggrieved civil servant need not endlessly wait for the decision of the departmental appeal, review or representation and can straight away approach the Tribunal by filing an appeal for the redressal of his grievance. The Act encourages a civil servant to first avail the remedy of departmental appeal, review or representation so that the matter can best be decided at the departmental level. However, if no progress is made on such departmental remedy within 90 days, the Act provides the civil servant with a higher remedy in the shape of an appeal before the Tribunal to agitate his grievance. When the aggrieved civil servant avails the higher remedy of appeal before the Tribunal after lapse of the prescribed period of 90 days, the departmental remedy of appeal, review or representation loses its significance and automatically comes to an end. Once the matter is brought before the Tribunal in accordance with the provisions of Section 4 of the Act, the departmental remedy stands exhausted. Under section 5 of the Act, the Tribunal on appeal can only confirm, set aside, vary or modify the order appealed against. The Tribunal has no power under the Act to direct the departmental authorities to decide the departmental appeal, application for review or representation of the civil servant, which remained undecided for a period of 90 days. We are fortified by an earlier view of this Court in *Falak Sher*¹.

7. We, therefore, hold that once the appeal, application of review or representation, as the case may be, of a civil servant is not decided by the departmental authority within a period of 90 days and he has elected to approach the Tribunal through preferring an appeal after lapse of that period, then his appeal has to be decided on merits and the Tribunal cannot dispose of that appeal by issuing direction to the departmental authority to decide the appeal, application for review or representation of the appellant, because the said remedy already stands exhausted by virtue of the lapse of time.

8. In the present case, the appeal of the petitioner which was filed in the year 2008, was illegally disposed of by the Tribunal vide its order dated 27.03.2008 by issuing a direction to the departmental authority to decide his representation. Despite that direction of the Tribunal, the representation of the petitioner was not decided and his appeal before the Tribunal was therefore restored in the year 2011 on his application. The order of restoration of appeal was not challenged by the respondents and thus attained finality. The restored appeal remained pending before the Tribunal since 2011 to 2019 and through the impugned order dated 10.12.2019, the Tribunal dismissed the appeal as not maintainable on the ground that it had been disposed of in the year 2008 without considering its earlier order of restoration of the appeal. In these facts and circumstances of the case, and the legal position stated above, the impugned order cannot be legally sustained. We, therefore, set aside the impugned order dated 10.12.2019 and direct the Tribunal to decide the appeal of the petitioner on merits within three months from the date of receipt of copy of this judgment. This petition is converted into an appeal and the same is allowed in the said terms.

MWA/A-16/SC Appeal allowed.