

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE JAMAL KHAN MANDOKHAIL  
MR. JUSTICE MUHAMMAD ALI MAZHAR

**CIVIL PETITION NO. 460 OF 2022**

(On appeal from the Order dated 05.01.2022 passed by the Punjab Service Tribunal, Lahore in Appeal No. 2547/2020)

Rafaqat Ali

...Petitioner

**VERSUS**

Chief Secretary, Government of the Punjab, Punjab, Lahore and others  
.....Respondents

For the Petitioner: In-Person

For the Respondents: Barrister Muhammad Mumtaz Ali,  
Additional Advocate General, Punjab

Date of Hearing: 25.10.2023

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J:-** This Civil Petition for leave to appeal is directed against the Order dated 05.01.2022 passed by the learned Punjab Service Tribunal, Lahore ("**Tribunal**") in Appeal No. 2547 of 2020 whereby the appeal filed by the petitioner was dismissed.

2. The crux of the matter is that the petitioner was proceeded on the charge of an alleged shameful/unethical act of harassing male students. After an inquiry had been conducted, and recommendations made, the Chief Operating Officer of the Technical Education & Vocational Training Authority ("**TEVTA**") imposed the penalty of Compulsory Retirement from service *vide* Order dated 18.02.2020. The petitioner filed a Departmental Appeal before the Chairman, TEVTA on 26.02.2020 which remained pending. During the intervening period, the petitioner also filed a representation before the Chief Secretary, Government of Punjab which remained undecided and according to him, in the same period of time, there was also a lockdown due to COVID-19 pandemic. Though the petitioner approached the learned

Tribunal on 16.06.2020, it is further reflected from the record that during the pendency of appeal before the Tribunal, the Chairman TEVTA decided the pending departmental appeal of the petitioner *vide* order dated 30.11.2020. The learned Tribunal dismissed the service appeal of the petitioner predominantly on the ground of limitation and observed in the impugned order that, according to Section 19 (2) of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 ("**PEEDA Act**") the petitioner was required to approach the Tribunal between 26.04.2020 and 26.05.2020, but he filed the appeal in the Tribunal on 16.06.2020 with a delay of 20 days, hence appeal filed by the petitioner was dismissed being barred by time.

3. The petitioner (in-person) argued that the learned Tribunal had dismissed the appeal without adverting to the relevant facts of the case. The petitioner contended that he was initially appointed in the Education Department, Government of Punjab. Later on he was transferred on deputation under the Punjab TEVTA Act, 2010 ("**TEVTA Act**"), and, as envisaged under Section 26 of the TEVTA Act, the status of the petitioner was a Civil Servant, therefore the Chief Secretary, Government of Punjab was competent to decide the departmental appeal, however the learned Tribunal failed to consider the actual appellate forum. He also attributed the delay to the lockdown imposed due to the COVID-19 pandemic which was not considered by the learned Tribunal while holding the appeal time barred. He then argued that the inquiry proceedings were not conducted in accordance with the law as no ample right of defence was accorded to the petitioner and though he was delivered a questionnaire during the inquiry, no opportunity was provided to cross-examine the witnesses deposed against him which was against the mandate of Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**").

4. The learned Additional Advocate General, Punjab ("**Addl. AG**"), during the course of arguments, admitted that the petitioner was a civil servant who was transferred to the Punjab TEVTA. It was further contended that the petitioner was initially appointed as a Junior Instructor (BS-14) *vide* office order dated 02.07.1999, whereas the TEVTA was established by virtue of the Punjab TEVTA Ordinance, 1999 which was repealed when the Punjab TEVTA Act, 2010 was

promulgated. He further argued that Section 26 of the TEVTA Act protects the status of the petitioner as a civil servant. It was further contended that in the case in hand the Chief Operating Officer was the Appointing Authority under the PEEDA Act; therefore he was authorized to pass any order in relation to the service matter of the TEVTA employees and according to Section 16 of the said Act, the appeal could have been preferred before the Appellate Authority i.e. the Chairman. It was further averred that compliant with Section 2(b) of the PEEDA Act, the authority next above the competent authority was authorized to hear an appeal. So far as the right of appeal provided under Section 20 of the TEVTA Act is concerned, the learned Addl. AG argued that it pertains to the order passed by the Authority, against which an appeal lies to the government, which, according to him, is not applicable to the petitioner's case.

5. Heard the arguments. It is clearly manifesting from the record that while deciding the appeal, the learned Tribunal predominantly discussed the issue of limitation without adverting to the crucial question regarding the relevant departmental authority before which the departmental appeal could have been preferred before approaching the Tribunal, or whether the delay in approaching the Tribunal was due to the reckless conduct of the petitioner or on account of the lockdown in light of the COVID-19 pandemic. According to the petitioner, the order of compulsory retirement dated 18.02.2020 was received by him on 21.02.2020. He filed a departmental appeal before the Chairman TEVTA on 26.02.2020, however after a long delay, the Chairman decided the appeal of the petitioner *vide* order dated 30.11.2020 (page 134 of the main paper book). The order of the alleged appellate authority accepted the recommendations of the inquiry officer and rejected the appeal after the lapse of the statutory period provided for deciding the appeal under the law without any independent reasons and application of mind, however, to justify the delay, the order reflects that due to the COVID-19 pandemic, the appeal could not be heard in time. According to the petitioner, when the Chief Secretary failed to decide the departmental appeal, he filed the appeal before the Tribunal on 15.06.2020 through his counsel. The foremost and dominant point at issue is germane to the determination of the competent authority, which may decide the

appeal. It is also an admitted position of the learned Add. AG that the petitioner is a civil servant under the niceties of Section 26 of the TEVTA Act but, in addition thereto, he argued that against the order of compulsory retirement, the appellate authority is the Chairman TEVTA. The nitty-gritties of Section 26 of the TEVTA Act, accentuate the repeal of the Punjab TEVTA Ordinance, 1999, and clause (d) of sub-section (2) envisions that the employees of the government transferred to the Punjab TEVTA under the repealed ordinance shall continue to be the employees of the government unless absorbed in the service of the authority. The petitioner thought to be a civil servant also filed an appeal before the Chief Secretary in accordance with the exactitudes of Section 20 of the TEVTA Act, which provides that a person aggrieved by an order of the authority may, within 30 days of the communication of the order, file an appeal to the government whose decision shall be final. We have also noted that other than Section 20, no other provision is available in the TEVTA Act for filing an appeal by an aggrieved employee, though, the learned Addl. AG argued that the right of appeal should have been availed under Section 16 of the PEEDA Act whereby the departmental appeal could have been filed by the petitioner directly to the Appellate Authority. The petitioner submits that though he preferred an appeal before the Chairman, but being a civil servant, he should have preferred the appeal to the Chief Secretary, Government of Punjab and since there was a lack of clarity, therefore, after preferring the departmental appeal to the Chairman, he also sent his departmental appeal to the Chief Secretary, which, according to him, was the competent authority to deal with cases of civil servants.

6. All the aforesaid important and crucial questions have not been discussed by the learned Tribunal, being the ultimate Appellate forum, regarding whether the departmental appeal was maintainable before the Chief Secretary or whether the departmental appeal filed before the Chairman was an appropriate remedy. Moreover, the appellate order passed by the Chairman also articulates that on presentation of departmental appeal, the petitioner, *vide* letter dated 16.03.2020 was called upon to attend for personal hearing on 18.03.2020 which was not afforded on account of COVID-19 pandemic and next date of hearing was 27.8.2020 and finally the personal hearing was afforded

to the petitioner on 01.09.2020 and appeal was rejected vide order dated 30.11.2020.

7. According to Section 19 of the PEEDA Act, an employee, other than the employee mentioned in Section 2 (h) (i), aggrieved by a final order passed under Section 16 or 17 may, within 30 days from the date of communication of the order, prefer an appeal to the Tribunal established under the Punjab Service Tribunals Act, 1974 (IX of 1974). However, it is further provided under Sub-section (2) that if the Appellate Authority or the Chief Minister does not pass any final order on the departmental appeal or the review petition filed under Section 16 within a period of 60 days from the date of filing of the departmental appeal or the review petition, the aggrieved employee, not being the employee mentioned in section 2 (h) (i), may prefer an appeal to the Punjab Service Tribunal within 90 days of the filing of the departmental appeal or review petition. The term jurisdiction has multifarious concepts of jurisprudence which means the study of law and the principles on which laws are based. The service tribunals have exclusive jurisdiction in matters falling within the terms and conditions of civil servant but an order affecting the terms and conditions of service is *sine qua non* for entreating the jurisdiction of the Service Tribunal which has been vested in limited jurisdiction to deal with and decide matters relating to the terms and conditions of service of a civil servant. The service appeal before the service tribunal is in essence the continuation of proceedings of the departmental order rendered in departmental appeal which is an administrative remedy and channel for alleviating the grievance of civil servant before invoking the jurisdiction of the service tribunal.

8. The underlying principle of appellate jurisdiction is to ensure checks and balances by means of reevaluation and reexamination of the judgment and orders passed by the lower *fora* in order to scrutinize whether any error has been committed on the facts and law and, while reversing the judgment of court below, record the reasons for justifying the appellate decision. The wisdom of setting up a Service Tribunal under Article 212 of the Constitution is to deal with and decide matters relating to the terms and conditions of service of Civil Servants. Under Section 5 (2) of the Service Tribunals Act 1973, the

Tribunal for the purposes of deciding any appeal, is deemed to be a Civil Court and have the same powers as are vested in such court. As a forum of exclusive jurisdiction, the Constitutional mandate as well as the provisions of the Service Tribunals Act articulate and command that the complete and substantial justice must be done between the parties with a judicious denouement of the case, therefore, before nonsuiting the petitioner on the ground of limitation, the fundamental question with regard to the competent authority should have been determined by the learned Tribunal *vis-à-vis* the claim and assertion of the petitioner whether being a civil servant, he rightly approached the Chief Secretary and, if he was not competent, then which was the competent authority for deciding departmental appeal under the TEVTA Act, including another crucial aspect of lockdown which had direct nexus with the plea of limitation in view of the notification, if any, issued from time to time by the Service Tribunal, relaxing the period of limitation during the lockdown period or following any other notification issued by the Federal Government or Government of Punjab and/or the learned Lahore High Court during the COVID-19 pandemic and then the appeal should have been decided where obviously the question of limitation could also be adverted to by the learned Service Tribunal whether any relaxation for freezing or immobilizing the period of limitation for filing appeal was available to the petitioner during interacted period attributable to lockdown as a result of COVID-19 or not?

9. In the wake of the above discussion, the Civil Petition is converted into an appeal and is allowed. The impugned order of the learned Tribunal is set aside and the matter is remanded to decide the appeal afresh, preferably within a period of 60 days.

Judge

Judge

Announced in open Court

On 21.11.2023 at Islamabad Judge\_\_\_\_\_

Khalid

Approved for reporting

