

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

**PRESENT:**

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.  
Mr. Justice Muhammad Nawaz Abbasi  
Mr. Justice Saiyed Saeed Ashhad

**CIVIL PETITION NO.378-L OF 2004**

(On appeal from the judgment dated 12.12.2003 passed by Federal  
Service Tribunal, Lahore in Appeal No.514(L)(C.S)/2003)

Muhammad Aslam

...Petitioner

**Versus**

Water & Power Development Authority etc.

...Respondents

For the Petitioner:

Mr. Mehboob Azhar Sheikh, ASC

For the Respondents:

Mr. Faiz-ur-Rehman, AOR

Date of hearing:

23.11.2006

**ORDER**

**Iftikhar Muhammad Chaudhry, CJ.** - This petition has been filed for leave to appeal against the judgment dated 12.12.2003 passed by Federal Service Tribunal, Lahore in Appeal No.514(L)(C.S.)/2003.

2. It is to be noted that petitioner has been non-suited firstly for the reasons that the appeal filed before the department was barred by time and secondly the memo of appeal was not signed by the petitioner in terms of Rule 6(F) of the Service Tribunal (Procedure) Rules 1974.

3. Learned counsel for the petitioner while arguing the case on the point that the department appeal was not dismissed on limitation but on merits contended that the Tribunal should not have non-suited the petitioner on this score as law laid down by this Court in the case of

**Anwarul Haq Vs. Federation of Pakistan through Secretary, Establishment Division Islamabad and 13 others (1995 SCMR 1505)**

would not be attracted. It may be noted that we have gone through the decision of the departmental authority, according to which the appeal filed by him was rejected. Therefore, the presumption would be that it has been rejected both on limitation as well as on merits. Besides it is

well settled in the case **Anwarul Haq** (supra) that if departmental appeal is not file within the statutory period the appeal before the Tribunal would not competent. Relevant para is, therefore, reproduced herein below: -

"The learned counsel for the petitioner frankly conceded before us that after redesignation of the post he has been performing his official functions as Assistant Executive Engineer. The Tribunal was, therefore, right in holding that after a lapse of 18 years the relief sought by the petitioner for correction of the seniority list was time barred. Reliance was also rightly placed by the learned Tribunal on the judgment of this Court in the case of Chairman, PIAC v. Nasim Malik (PLD 1990 SC 951) that when an appeal before the departmental authority was time-barred, the appeal before the Tribunal was also incompetent on that account."

3. The above view was reiterated by this Court in the cases of **(i) Dr. Amwar Ali Sahto and others v. Federation of Pakistan and others (PLD 2002 SC 101)** **(ii) State Bank of Pakistan v. Khyber Zaman and others (2004 SCMR 1426)** and **(iii) N.E.D. university of Engineering and Technology v. Syed Ashfaq Hussain Shah (2006 SCMR 453)**.

4. Since the petitioner has been non-suited for non-filing of the appeal within time, therefore, without dilating on other grounds which prevailed upon the Tribunal we are not inclined to grant leave to appeal in view of the above settled legal position.

5. Thus for the forgoing reasons we see no force in the petition, which is dismissed, and leave declined.

Chief Justice

Judge

Judge

**Islamabad, the**

23<sup>rd</sup> November, 2006

Atif/\*

**NOT APPROVED FOR REPORTING**