

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**

Service Appeal No. 1344/2019

Date of Institution ... 14.10.2019

Date of Decision... 30.01.2023

Ibrar Hussain, Ex Sub-Inspector, P.S Wari, Upper Dir.

... (Appellant)

**VERSUS**

Inspector General of Police, Government of Khyber Pakhtunkhwa, Peshawar  
and 03 others.

... (Respondents)

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MR. MUHAMMAD AYUB KHAN SHINWARI,  
Advocate

--- For appellant.

MR. UMAIR AZAM KHAN,  
Additional Advocate General

--- For respondents.


SALAH-UD-DIN  
FAREEHA PAUL

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MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Brief but relevant facts giving rise to filing of the instant appeal are that departmental action was taken against the appellant on the allegations of his absence from duty and he was awarded major penalty of compulsory retirement from service vide order dated 22.06.2018.

 The penalty so awarded to the appellant was challenged by him through filing of departmental appeal, however the same was not responded, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted joint para-wise reply, wherein they refuted the assertions raised by the

appellant in his appeal and raised certain legal as well as factual objections including the objection of limitation.

3. Learned counsel for the appellant has argued that no proper inquiry was conducted in the matter and the appellant was not provided any opportunity of personal hearing or self defence. He next contended that the mandatory provisions of Khyber Pakhtunkhwa Police Rules, 1975 were not complied with, which has rendered the impugned order as wrong and illegal. He further argued that the rights of the appellant as guaranteed under Article-4 of the Constitution of Islamic Republic of Pakistan, 1973 were badly violated. He also argued that the absence of the appellant from duty was not willful and the imposition of major penalty of compulsory retirement from service was thus too harsh in the given circumstances. He further contended that as the impugned order is void, therefore, no limitation would run against the appellant. In the last he requested that the appeal in hand may be allowed and the appellant may be reinstated in service with all back benefits.

4. Conversely, learned Additional Advocate General for the respondents has argued that the appellant had allegedly filed departmental appeal on 19.07.2018, while the instant service appeal has been filed on 14.10.2019, which is badly time barred and is liable to be dismissed on this score alone. He further argued that the appellant was not at all interested in performing his duty and remained absent from duty with effect from 09.02.2018 till the date of his compulsory retirement from service i.e 22.06.2018. He next argued that charge sheet as well as statement of allegations were

issued to the appellant and a proper inquiry was conducted in the matter by complying all legal and codal formalities. He also argued that in his reply to the charge sheet, the appellant has admitted his absence from duty without giving any plausible reason for his absence from duty. He further argued that the appellant was a member of discipline force and in view of his long absence from duty without any plausible reason, the appellant has rightly been awarded major penalty of compulsory retirement from service.

5. We have heard the arguments of learned counsel for the parties and have perused the record.


6. A perusal of the record would show that departmental action was taken against the appellant on the allegations that he remained absent from duty and he was thus compulsorily retired from service vide impugned order dated 22.06.2018. The same was allegedly challenged by the appellant through filing of departmental appeal on 19.07.2018, which was not responded, therefore, he was required to have filed service appeal before this Tribunal within 30 days after elapse of 90 days of filing of the departmental appeal. We have, however observed that the appellant has filed service appeal on 14.10.2019 i.e after expiry of more than 01 years. The service appeal filed by the appellant is thus badly time barred. The appellant was required to justify the delay of each day, however while going through the application filed by the appellant for condonation of delay, we have observed that the only justification raised by the appellant for condonation of delay is that the impugned order is void and no limitation runs against a void

order, which is an incorrect approach. It is well settled that law favours the diligent and not the indolent. This Tribunal can enter into merits of the case only, when the appeal is within time. August 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.

7. In view of the above discussion, the appeal in hand stands dismissed being barred by time. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
30.01.2023

  
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

ORDER  
30.01.2023

Appellant alongwith his counsel present. Mr. Noor Baz Khan, Inspector (Legal) alongwith Mr. Umair Azam Khan, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed being barred by time. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
30.01.2023



(Fareeha Paul)  
Member (Executive)



(Salah-Ud-Din)  
Member (Judicial)

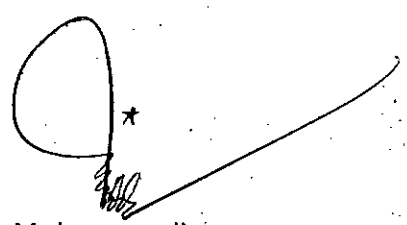
23.09.2022

Mr. Muhammad Ayub Khan Shinwari, Advocate for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Zewar Khan, Inspector for the respondents present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. To come up for arguments before the D.B on 02.12.2022.

Rs-100/-  
Appellant Deposited  
Security & Process Fee

*Handwritten signature*  
02/12/22

  
(Mian Muhammad)  
Member (E)

02.12.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

As per pervious order sheet dated 23.09.2022, the appeal in hand was fixed for arguments before the D.B for today date, however office has inadvertently fixed the same before S.B, therefore, to come up for arguments before the D.B on 30.01.2023.

SCANNED  
Pos. Shinwari

  
(Salah-Ud-Din)  
Member (J)