

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 917/2019

Date of Institution ... 02.07.2019

Date of Decision... 31.05.2023

Muhammad Usman (Constable) Belt No. 131 S/O Muhammad Ayaz.
R/O Muhallah Paynda Khel Charsadda Town, Tehsil & District Charsadda.
... (Appellant)

VERSUS

The Regional Police Officer (R.P.O) Mardan and 04 others.
... (Respondents)

MR. SAIF-UR-REHMAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MS. FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stating the facts giving rise to filing of the instant appeal are that disciplinary action was taken against the appellant on the allegations of his absence from duty. On conclusion of the inquiry, he was awarded major punishment of dismissal from service vide order dated 06.02.2018 passed by District Police Officer Charsadda. The departmental appeal of the appellant was declined vide order dated 02.04.2019, where-after he filed revision petition, which was also rejected, hence the instant service appeal.

2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of


filing of reply, wherein they refuted the assertion raised by the appellant in his appeal.

3. Learned counsel for the appellant argued that whole of the proceedings were conducted at back of the appellant without associating him with the inquiry proceedings and the appellant has thus been condemned unheard; that mandatory provisions of Police Rules, 1975 were not complied with, therefore, the impugned orders have got no legal sanctity and are liable to be set-aside; that fundamental rights of the appellant as enshrined in Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 have been badly violated; that the absence of the appellant from duty was not willful rather the same was on account of illness of his mother. In the last he requested that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Deputy District Attorney for the respondents contended that the appellant had remained absent from duty for considerable long period without any leave or permission of the competent Authority; that absence of the appellant without any leave or permission of the competent Authority constituted misconduct, therefore, two regular inquiries were conducted in the matter but the appellant had not even bothered to appear before the inquiry officer; that the appellant was dismissed from service vide order dated 06.02.2018, while he submitted departmental appeal on 07.03.2019, which was badly time barred, therefore, the appeal in hand is not competent; that

charge sheet, statement of allegations as well as final show-cause notice were issued to the appellant but he had not even bothered to join the inquiry proceedings; that the appellant in order to cover his willful absence, has put forward a concocted story of illness of his mother; that the appellant was in habit of remaining absent from duty and previously too, he was awarded penalties on so many occasions including the penalty of dismissal from service, however he did not mend his way.

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



6. It is evident from the record that the appellant was dismissed from service vide order dated 06.02.2018. The appellant was required to have challenged the same by way of filing departmental appeal within 30 days, however he submitted departmental appeal on 07.03.2019 i.e after a delay of about 13 months, which was badly time barred. The appellant has though submitted an application for condonation of delay before this Tribunal, however no sufficient reason has been put forth by the appellant, which could be considered as a ground for condonation of the delay. It is settled principle of law that when departmental appeal is barred by time before the departmental Authority, service appeal before this Tribunal is incompetent. Reliance in this respect is placed on 2007 SCMR 513 and 2012 SCMR 195. Moreover, 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 limitation, its merits need not to be discussed.

7. In view of the foregoing discussion, it is held that as the departmental appeal of the appellant was badly time barred, therefore, the appeal in hand being incompetent is hereby, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

31.05.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)