

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 760/2018

Date of Institution ... 30.05.2018

Date of Decision... 13.06.2023

Yasir Jamal, Ex-Constable No. 315 R/O Manzini Banda, Tehsil Takht-e-Nasrati, District Karak.

... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. ASLAM KHAN KHATTAK,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

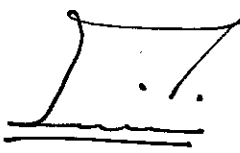
--- For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

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

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing of the instant appeal are that the appellant was appointed as Constable on 20.11.2008. Departmental action was taken against him on the allegations that vide Daily Diary No. 29 dated 05.07.2012 Police Lines Karak, he had remained absent from duty with effect from 05.07.2012. The pay of the appellant was stopped and he was issued charge sheet as well as statement of allegations on 13.08.2012. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide O.B No. 1254 dated 11.12.2012. The appellant challenged his penalty through filing of departmental appeal on 04.05.2018, which was filed being time barred for about 05



years. The appellant then submitted the instant appeal in this Tribunal for redressal of his grievance.

2. On receipt of the appeal and its admission to full hearing, respondents were summoned, who appeared through their representatives and contested the appeal by filing written replies raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant argued that absence of the appellant from duty was not willful rather the same was due to illness of the appellant; that neither any show-cause notice nor any charge sheet or statement of allegations were issued to the appellant and he was awarded the impugned major penalty of dismissal from service without any regular inquiry, therefore, the impugned orders are liable to be set-aside; that the appellant was not provided any opportunity of self defence as well as personal hearing, therefore, the impugned orders are nullity in the eye of law; that the appellant was awarded major penalty of dismissal from service with retrospective effect, therefore, the impugned order dated 11.12.2012 passed by the competent Authority is void ab-initio, hence no limitation would run against the same; that one Constable Umar Khan No. 646 was discharged from service vide order dated 01.12.2008, whose departmental appeal was though barred by time for about 08 years but the same was allowed and he was reinstated in service, therefore, the appellant also deserves the same treatment; that the departmental appeal of the appellant was though time barred but the appellant

cannot be denied the desired relief merely on the technical ground of limitation.

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 charge sheet as well as statement of allegations were issued to the appellant and handed over to Mir Salam, DFC for its service upon the appellant, however appellant's father namely Ali Abbas submitted in writing that the appellant had proceeded to Saudi Arabia; that the appellant had proceeded to Saudi Arabia without obtaining NOC or ex-Pakistan leave from the competent Authority and his conduct clearly depicted that he was not at all interested in public service; that the appellant did not join the inquiry proceedings on his own choice and he was also issued notice through publication in newspaper "*Express*" to resume his duty, however he remained absent; that the appellant remained absent for a period of more than 05 years and submitted departmental appeal on 04.05.2018, which was dismissed being badly time barred; that as the departmental appeal of the appellant was barred by time, therefore, the appeal in hand is not competent and is liable to be dismissed on the score alone.

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

6. The appellant was dismissed from service vide order dated 11.12.2012, which was required to have been challenged through

filing of departmental appeal within 30 days but the appellant filed departmental appeal on 04.05.2018 i.e after a delay of more than 05 years, which was badly time barred. The departmental appeal of the appellant was dismissed vide order dated 10.05.2018 on the ground that the same was time barred for about 05 years. August Supreme Court of Pakistan in its judgment reported as 2011 SCMR 08 has held that question of limitation cannot be considered a technicality simpliciter as it has got its own significance and would have substantial bearing on merit of case. The contention of learned counsel for the appellant that as the appellant has been awarded the impugned penalty with retrospective effect, therefore, the impugned order dated 11.12.2012 passed by the competent Authority is void ab-initio and no limitation would run against the same, is misconceived. Though punishment could not be awarded with retrospective effect, however where a civil servant has been proceeded against departmentally on the ground of his absence from duty, then punishment could be awarded to him retrospectively from the date of his absence from duty and the same is an exception to the general rule that punishment could not be imposed with retrospective effect. Worthy, apex court in its judgment reported as 2022 PLC (C.S.) 1177 has observed as below:-


“8. We find that the impugned judgment has totally ignored the record and facts of this case. The department has also been totally negligent in pursuing this matter and has allowed the Respondent to remain absent from duty for so long. On the issue of retrospective effect, we find that admittedly, the respondent has been absent


from duty w.e.f. 01.09.2003, hence no illegality is made out by considering his dismissal from there as he has not worked with the department since the given date. (Emphasis provided)."

7. It is well settled proposition of law that when an appeal of an employee was time barred before the appellate Authority, then the appeal before the Tribunal was also not competent. Reliance in this respect is placed on 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 S.C 951. This Tribunal can enter into merits of the case only, when the appeal is within time. Moreover, worthy 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.

8. In view of the above discussion, it is held that as the departmental appeal of the appellant was badly time barred, therefore, the appeal in hand stands dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.06.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)