

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 5232/2021

Date of Institution ... 26.03.2021

Date of Decision... 22.08.2023

Adnan Khan S/O Ramzan Khan, Ex-Constable No. 816, Operation Staff,
Police Force, Kohat. R/O Maidan Chowk Jungle Khel, Tehsil and District
Kohat. ... (Appellant)

VERSUS

The Regional Police Officer, Kohat Region Kohat and 01 another.

... (Respondents)

MR. ASHRAF ALI KHATTAK,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Succinct facts forming the background of the instant service appeal are that departmental action was taken against the appellant on the allegations of absence from duty as well as his involvement in case FIR No. 737 dated 07.10.2018 under section 9C-CNSA Police Station MRS Kohat as well as case FIR No. 615 dated 27.11.2017 under section 9C-CNSA Police Station Billitang. On conclusion of the inquiry, he was awarded major punishment of dismissal from service vide order bearing OB No. 1373 dated 14.12.2018. The appellant challenged his penalty by way of filing departmental appeal before the Regional Police Officer Kohat Region Kohat, which was rejected vide order




dated 18.02.2021 on the ground that the same was barred by time for more than two years. The appellant then approached this Tribunal by way of filing instant service appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal and factual objections.

3. Learned counsel for the appellant contended that the appellant was falsely charged in case FIR No. 737 dated 07.10.2018 under section 9C-CNSA Police Station MRS Kohat due to which he could not attend his duty; that the appellant has already been acquitted by competent court of law in both the Narcotics cases registered against him, therefore, the ground of involvement of the appellant in criminal cases has vanished away; 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 by violating the principle of *Audi-altram-partem*; that the appellant had filed departmental appeal after his acquittal in the Narcotics cases, however the same was wrongly rejected on the technical ground of limitation; 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.

4. On the other hand, learned Assistant Advocate General for the respondents argued that the appellant remained involved in smuggling of Narcotics and was charged in two cases of such

nature, which brought bad name to the Police Department; that previously too, the appellant was awarded minor penalty due to his involvement in such nature cases, however the appellant did not mend his way and remained indulged in smuggling Narcotics; that a regular inquiry was conducted in the matter and the appellant was provided opportunity of personal hearing as well as self defence; that after his involvement in the concerned criminal cases, the appellant did not informed the high-ups and remained absent from duty without any leave or permission of the competent Authority; that criminal as well as departmental proceedings are distinct in nature and both can run parallel; that the appellant was dismissed from service vide order dated 14.12.2018, while he submitted departmental appeal on 20.01.2021, which was badly time barred, therefore, the appeal in hand is not maintainable and liable to be dismissed with cost.



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

6. The appeal in hand was admitted for regular hearing vide order dated 05.07.2021, however with the observations that question of limitation shall remain intact for discussion during regular hearing. The appellant was awarded major penalty of dismissal from service vide order bearing OB No. 1373 dated 14.12.2018. The appellant was required to file departmental appeal within 30 days, however he remained indolent and filed departmental appeal on 20.01.2021 i.e after a delay of about two years. The appellant was

required to put forward any justifiable reason for delay in filing of departmental appeal, however he did not even bother to file any application for condonation of delay. August Supreme Court of Pakistan in its judgments reported as 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 S.C 951 has held that when an appeal of an employee was time barred before the appellate Authority, then the appeal before the Tribunal was not competent. Moreover, worthy apex court 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. As a sequel to the above discussion, the appeal in hand stands dismissed being not maintainable. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
22.08.2023



(KALIM ARSHAD KHAN)
CHAIRMAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)