

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No.270/2023

Syed Adnan Ali Shah S/O Syed Liaqat Ali Shah Ex-Chowkidar, GGHS Jaganath Tehsil  
Razzar District Swabi ..... **Appellant**

**VERSUS**

1. Director E&SE, KP Peshawar, near GHSS No.1, Peshawar City.
2. Assistant Director (Admn) E&SE, KP Peshawar.
3. District Education Officer (Female) Swabi.

**Respondents**

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**DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI**

**District Education Officer  
(Female) Swabi**

17/10/23  
Peshawar

01

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No.270/2023

Syed Adnan Ali Shah S/O Syed Liaqat Ali Shah Ex-Chowkidar, GGHS Jaganath Tehsil  
Razzar District Swabi .....

**Appellant**

**VERSUS**

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2. Assistant Director (Admn) E&SE, KP Peshawar.
3. District Education Officer (Female) Swabi.

**Respondents**

**PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS No. 1 TO 3**

Respectfully Sheweth,

Khyber Pakhtunkhwa  
Service Tribunal

**PRELIMINARY OBJECTIONS.**

Diary No. 7999

Dated 02/10/23

1. That the appeal is badly barred by time, Hence not maintainable.
2. That the departmental appeal is also barred by time, Hence not maintainable.
3. That the service appeal is wholly incompetent, misconceived and untenable.
4. That the service appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same service appeal is liable to be rejected/ dismissed.
5. That the service appeal is unjustifiable, baseless, false, frivolous and vexatious. Hence the same is liable to be dismissed with the order of special compensatory cost in favour of respondents.
6. That no constitutional or legal right of the appellant has been violated, therefore, the appellant is not entitled to invoke the constitutional jurisdiction of this honourable Service Tribunal under Article 212 of the constitution of Pakistan.
7. That the appellant has not come to the Court/Tribunal with clean hands.
8. That the appellant has concealed the material facts from this Honourable Tribunal.
9. That the appeal is bad for misjoinder and non-joinder of the necessary party.
10. That the appellant has filed the instant appeal just to pressurize the respondents.
11. That the appellant has no cause of action to file the instant appeal.
12. That the appeal is not maintainable in the eye of law.
13. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.

## Facts:

09

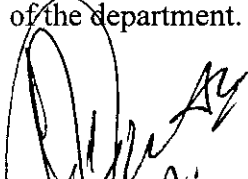
1. That the para relates to the appointment of the appellant. This does not affect the prayer of the appellant, hence needs no comments.
2. That the appellant misconceives the matter. As a land donor, he shapes up himself as a Don. On appointment of Mst. Haseena D/O Noor Rahman as lab-attendant at GGHS Jagannath swabi vide DEO(F) Endst No: 2185-94 Dated:03-08-2022, when the appointee went to school for taking over charge, the appellant reacted indisciplinarily by locking the main gate of the school, shouted on the mosque loudspeaker instigating the general public and compelled the other lady staff to take refuge in the nearby places.  
The DEO Female on getting the information, visited the school, analyzed the situation and lodged an FIR No 682 Dated: 06-09-2022U/S 506,341,186/34 PPC in Police Station Yar Hussain. **FIR annexed as A.**
3. That on 06-09-2022, the school opening time was 7:30AM. The untoward situation took place round about the school opening time. He may have gone home after showing his devilish character.
4. That on 06-09-2022, the DEO Female Swabi responded promptly, reached the venue, collected the facts, lodged an FIR and issued a show cause Vide Endst No. 2285 Dated 06-09-2022. The reason was that the appellant was aggressive and excited by the time. It is correct to the extent that he submitted reply to the show cause notice Vide Diary No. 2095 Dated:10-09-2022. But DEO Female Swabi as competent authority did not get satisfied with his reply. He was given the opportunity of personal hearing on 26-09-2022 Vide No.2477, Dated: 20-09-2022. **Show cause notice, reply of show cause notice and letter for personal hearing annexed as B, C, and D.**
5. That the appellant appeared before the competent authority for personal hearing on 26-09-2022. In personal hearing, the oral and written version were found absolutely contradictory. His version could not satisfy the competent authority. **Personal hearing report is annexed as E.**
6. That the appellant through his furious and unlawful attitude had created an atmosphere of uncertainty, wickedness and a local disturbance was seemingly being expected. Hence, he was rightly removed from service failing which the school would have become non-functional. **Removal from service order annexed as F.**
7. That the appellant submitted a time barred departmental appeal to the appellate authority i.e. Director E&SE Khyber Pakhtunkhwa Dated: 20-10-2022. But the appellate authority rejected the time barred departmental appeal of the appellant on 01-12-2022.
8. Incorrect hence denied. The representation of the appellant was rejected by the appellate authority. A copy of the rejection letter has been sent to him on 01-12-2022.

- 9. It was in the knowledge of the appellant, that his departmental appeal had been rejected. Therefore, his service appeal is barred by time. Judgement of Supreme Court annexed as G
- 10. That the appellant is not an aggrieved person at all, because, he blatantly obstructed in the discharge of public duty in the arrogance of being a land donor. He also brought a contempt on the department. Moreover, he had politicized the matter by bringing external interference. The service is appeal is also badly barred by time. Therefore, the appellant has no cause of action to file the instant appeal and appeal in hand is liable to be dismissed on the above facts and circumstances.


**Grounds:**

- A. That the appellant candidly submit<sup>s</sup> <sup>that</sup> the orders /letters are in accordance with law, rules and policy.
- B. That the appellant has been rightly removed from service. The FIR was registered against his on account of his criminal attitude and his open threats to the staff and others not to come to school. The case is still under trail. His removal from service is due to his misconduct after observance of due process of departmental procedure.
- C. Incorrect hence denied. The incident on that day is an undeniable fact. He fought with the department on wrong footing. He endangered the lives of innocent, modest and veiled female teachers. He is responsible ~~for~~ for the loss. No need of implication /fabrication.
- D. Incorrect hence strongly denied. He violated the rules, obstructed in the discharge of public duties, shooted the issue for personal gain and created law and order situation in the locality. Timely controlled by the administrative and departmental action against him. There is no question of any favoritism, nepotism and political victimization in the instant case.
- E. Incorrect, hence denied, this was an open and shut case. The school was locked unlawfully. The community was instigated to come out against the duly appointment of an orphan girl. The innocent female staff was compelled to walk stray in the locality. The DEO Female Swabi personally visited the school that time and observed all the facts herself and was an eye witness to the situation. In such like cases, for prompt disposal, the inquiry is always dispensed with. Therefore, the orders under E&D rules 2011 are sustainable in the eyes of law.
- F. The respondents seek permission to raise/argue additional points/grounds on the day of hearing the case.

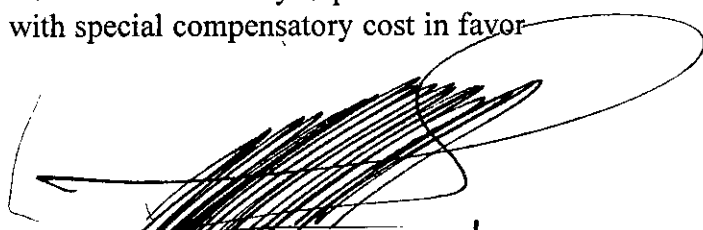
In view of the above stated submissions, it is therefore earnestly requested that the instant appeal may very graciously be dismissed with special compensatory cost in favor of the department.

  
 Director E&SE  
 KP Peshawar  
 Respondent No.1

**Director**  
 Elementary & Secondary Education  
 Khyber Pakhtunkhwa Peshawar

  
 DEO Female Swabi  
 Respondents No.3

**District Education Officer**  
 (Female) Swabi

  
 Assistant Director (Admn)  
 E&SE KP Peshawar  
 Respondents No.2  
 Assistant Director (Admn)  
 Directorate E&SE Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No.270/2023

Syed Adnan Ali Shah S/O Syed Liaqat Ali Shah Ex-Chowkidar, GGHS Jaganath Tehsil  
Razzar District Swabi .....

**Appellant**

**VERSUS**

1. Director E&SE, KP Peshawar, near GHSS No.1, Peshawar City.
2. Assistant Director (Admn) E&SE, KP Peshawar.
3. District Education Officer (Female) Swabi.

**Respondents**

**Affidavit**

I Sofia Tabassum DEO Female Swabi do hereby solemnly affirm and declare on oath that the contents of the comments submitted by respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

*It is further stated on oath that in this appeal the answering respondents have been*

**DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI**

*neither place exported nor their defense stated off first*

*District Education Officer  
(Female) Swabi*



ابتدائی اطلاعاتی رپورٹ

ابتدائی اطلاعاتی رپورٹ کے تحت

تاریخ: 08/09/22

583

وقت: 11:30 AM

DEO (E)

505.341.186/24

ابتدائی اطلاعاتی رپورٹ کے تحت... (Handwritten details of the report)

مقررین: ...

ابتدائی اطلاعاتی رپورٹ کے تحت... (Main body of the report)

تفصیلی رپورٹ... (Summary/Conclusion)

SI 411/0  
06-09-22

In the Deputy Commissioner's office subject legal action memo it is to inform you that AGHS Jagannath has been locked by one Javed Iqbal...

مقررین: ... (Signature and date)

(Signature)



Annexure-B  
06  
OFFICE OF THE DISTRICT EDUCATION OFFICER  
(FEMALE) DISTRICT SWABI

## SHOW CAUSE NOTICE

I Sofia Tabbasum District Education Officer(Female) Swabi, under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011, do hereby serve upon you, Mr: Syed Adnan Ali Shah Chowkidar GGHS Jaga Nath Swabi, this show Cause notice as follows:-

- 1:- That Mst: Haseena D/O Noor Rehman has been appointed vide this office Endst No.2185-94 dated 31-08-2022 as Lab Att: under Gen Quota.
- 2:- That when she attended the school for taking over charge, you did not allow her for taking overcharge and closed the school
- 3:- That you gave her threats not to come to school and also locked the school till the withdrawal of her appointment order.
- 4:- That you have also arose the local community for protest.
- 5:- That you have given the land on market price, but the Govtt: gave you job on humanitarian grounds.
- 6:- That you have also stopped the school staff not to attend for duty.
- 7:- That By reason of the above, you appear to be guilty of inefficiency and disobedience in your duty under Rules 3(a) (b) and (d) in Rule1 (i), (ii), (iv) and (vi) of the Khyber Pakhtunkhwa Servants (Efficiency and Discipline) Rules 2011 and have rendered yourself liable to all or any of the penalties specied in Rule-04 of the Rules ibid.

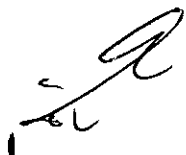
As a result therefore, I as the competent Authority have tentatively decided to proceed against you under the above mentioned rules. You are, therefore, required to show cause as to why one of the major or minor penalty under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, should not be imposed upon you and also intimate whether you desire to be heard in person. If no reply to this office is received within (07) days of its delivery, it shall be presumed that you have no defence to put in and in that case Ex-parte action will be taken against you which may culminate your removal from service.

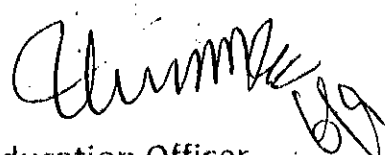
(SOFIA TABBASUM)  
District Education Officer  
(Female) Swabi

Endst No 2285 / \_\_\_\_\_ Dated 6/9 /2022

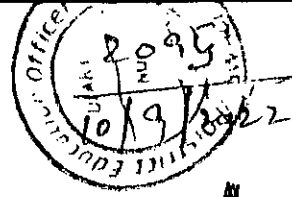
Copy of the above is forwarded for information & necessary Action to the:-

- 1:- Director Elementary & Secondary Education Khyber Pakhtukhwa Peshawar.
- 2:- Deputy Commissioner Swabi.
- 3:- Education Monitoring Authority Swabi.
- 4:- District Police Officer with the request for necessary action please.
- 5:- Mr. Syed Adnan Ali Shah Chowkidar GGHS Jaga Nath Tehsil Razzar & District Swabi (Through registered Cover).

  
District Education Officer  
(Female) Swabi

  
District Education Officer  
(Female) Swabi

The District Education officer (Female)  
District Swabi.



DA-III  
Annexure  
07-C

Subject: REPLY TO THE ALLEGED SHOW CAUSE NOTICE VIDE DATED 06-09-2022, ENDST NO. 2285.

Respected Sir/Madam.

1. That Mr. Syed Adnan Ali Shah Chowkidar GGHS Jaganath Swabi, has nothing to do with Para No 1, hence no concern with the same.
2. That para No 2 of the Show Cause Notice is incorrect, therefore denied in Toto.
3. That Para No 3 is also incorrect, therefore denied in toto.
4. That Para No 4 is also incorrect, hence denied.
5. That Para No 5 is incorrect, as since his birth there is no landed property owned by him, hence this para is denied in toto.
6. That Para No 6 is also incorrect, hence denied, the alleged Show Cause Notice is based on surmises and conjectures and liable to withdrawn.
7. That the allegations against Mr. Syed Adnan Ali Shah are baseless with ulterior motives based on surmises and conjectures as Mr. Syed Adnan Ali Shah is not involved in the alleged incident.  
That Mr. Syed Adnan Ali Shah is ready to take Oath that the allegation against his are false and baseless.
8. That the matter alleged in the above cited notice is already pending in the court vide Case FIR No:682 dated 06-09-2022, hence the Show Cause notice in hands is infructuous. (Copies Attached)

It is, therefore, submitted that the Show Cause notice may kindly be withdrawn.

YOUR'S OBEDIENT

Syed Adnan Ali Shah  
Chowdidar  
GGHS Jaghnath.



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Annexure-D

08



PH#0938-280339

**OFFICE OF THE DISTRICT EDUCATION OFFICER  
(FEMALE) DISTRICT SWABI**

NO. 2477 / Dated 20/9/2022

To,

1. Syed Adnan Ali  
Chowkidar GGHS.Jaganath.
2. Sajid Iqal Naib Qasid GGHS.Jaganath

Subject:- **PERSONAL HEARING.**

Memo:-

With Reference to the subject cited above. You are directed to attend the office of the District Education Officer (Female) Swabi r on **26-09-2022** at **10 AM** for personal hearing on date & time mentioned above to resolve the issue.

DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Endst.No. \_\_\_\_\_

Copy of the above is forwarded for information to the;-

- 1 .Head Mistress GGHS Jaganath Swabi. Peshawar.

District Education Officer  
(Female) Swabi

DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI



37/98  
Annexure - E

**DISTRICT EDUCATION OFFICE (FEMALE) SWABI**

(Office phone Fax No 0938280339, [emisfswabi@yahoo.com](mailto:emisfswabi@yahoo.com))

(09)

Swabi No 2701-6 Dated 8/10/2022

To,


Sajid Iqbal N/Q  
Syed Adnan Ali Chowkidar  
GGHS Jaganath (Swabi)

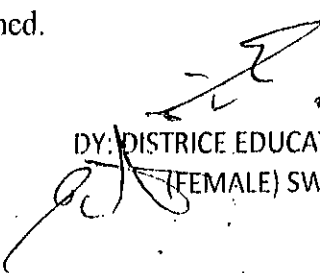
**Subject:- Personal Hearing Report**

Consequent upon show cause notice issued to the above said Employees vide Endst.No.2284 Dasted.06-09-2022 and their replies vide D.No 2094 & 2095 Dated. 10-09-2022 the undersigned due to non-satisfaction over their replies, called both of them for personal hering for providing them the opportunity of defense.

About the closer of school forcibly by them on 6-09-2022 in protest of employment of another CIV employee at the school which they considered as their right as land donors. It was a clear cut violation of existing departmental policy and superior court order. FIR regarding the incident was lodged against the above said employees and the matter is subjudiced now.

In personal hearing, the oral and written version was absolutely contradictory and they were playing smart with me.  
Both of them could not satisfied the undersigned.

  
District Education Officer  
(Female) Swabi

  
DY: DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

10

Sajid Iqbal & others VS State

12/22

SPP Syed Aizaz Ali Shah for the state present. Counsel for the petitioner/accused present. Record received.

The accused/petitioner namely Sajid Iqbal, Javid Iqbal sons of Saeed Khan and Syed Adnan Shah son of Liqat Shah residents of Jagannath, Tehsil Jalor, District Swabi presently confined in judicial lockup, seeks their post arrest bail, being involved in FIR No. 682 dated 06.09.2022 u/s 506/341/186/34 PPC of PS Yar Hussain.

Arguments heard and record perused.

Perusal of record reveals that the accused/petitioners have been charged by the complainant for the commission of offence under section 506/341/186/34 PPC, however section 341/186 PPC are bailable in its nature. The offence under section 506 PPC leveled against the accused/petitioner do not fall within the prohibitory clause of section 497 Cr.P.C. Granting of bail is the settled principle of law which could not be withheld as a punishment much or less where the offences do not falls within the prohibitory clause of section 497 CrPC and in suchlike cases grant of bail is a rule and refusal thereof is an exception.

In view of the above, the accused/petitioners are admitted to be released on bail upon furnishing bail bonds to the tune of Rs. 80,000/- (Eighty thousand) each with two sureties each in the like amount to the satisfaction of this court. Copy of this order shall invariably be made part of the prosecution record, where after the same be returned to the quarter concerned. File be consigned to record room after its completion and compilation.

Announced  
08.09.2022

Muhammad Imtiaz  
JM-1, Jalor (Swabi)

Copy of this order shall invariably be made part of the prosecution record, where after the same be returned to the quarter concerned.



11

## DISTRICT EDUCATION OFFICE (FEMALE) SWABI

(Office phone Fax No 0938-280339, emisfswabi@yahoo.com)

No 3186 Dated 17/11/2022

To

The Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar

Subject: - APPEAL FOR RE-INSTATMENT.

Memo: -

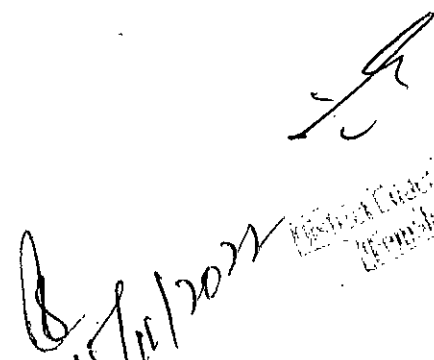
Reference your good office letter No. 2751 and 2752/F No./A-20/C-IV/Sajid Iqbal/Swabi P/File, and Syed Adnan Ali Shah Dated Peshawar the 24/10/2022, on the subject captioned above the requisite report/comments are hereby submitted as under.

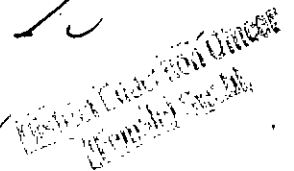
- 1- that Mst. Haseena D/O Noor Rehman was appointed vide this office Endst. No. 2185-94, dated 3-08-2022 against Laboratory Attendant post at GGHS Jaganath Swabi.
- 2- That when the said appointee went to school for taking over charge, the C-IVs did not allow the appointee for taking over charge they arose the local community for protest locked the school and also not allow the staff of the school to perform duties till the withdrawal of the appointment order.
- 3- That an FIR No.682 dated 06-09-2022 u/s506/341/186/34 PPC was lodged against the C-IVs in Police station Yar Hussain.
- 4- That he was issued a show cause notice vide this office endst. No 2284 and 2285 dated 06/09/2022. He was also issued letter of personal hearing vide. No.2477 dated.20/09/2022.
- 5- That the under signed due to non-satisfaction over the replies and found contradiction in oral and written statement during personal hearing, removed them from service dated 17-10-2022.

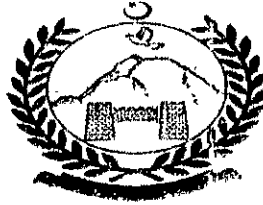
Report is hereby submitted for your kind perusal and further necessary in to the matter please.

Encls:-

1. Show cause notices.
2. Replies to the show cause.
3. Notice of personal hearing.
4. Report of personal hearing.
5. Removal from service order.

  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

  
District Education Officer  
Peshawar



Annexure - A  
12 38

**DISTRICT EDUCATION OFFICE (FEMALE) SWABI**  
(Office phone & Fax No 0938280339, [emisfswabi@yahoo.com](mailto:emisfswabi@yahoo.com))

**ORDER**

**WHEREAS**, disciplinary proceedings were initiated against **Syed Adnan Ali Shah**, Chowkidar Govt. Girls High School Jagan Naath, Swabi, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011. The accused was served with show cause due to not allowing the new appointee Class-IV, for taking over charge and kept close the school.

**AND WHEREAS**, he arose the local community for protest and also stopped the school staff from their official duty. Moreover he gave threats to the new Class-IV appointee.

**AND WHEREAS**, after receiving reply to the show cause, the accused also opted for personal hearing, according he was personally heard on 26/09/2022.

**AND WHEREAS** after going through the material on record, reply to the show cause and subsequent personal hearing the accused is found guilty of misconduct.

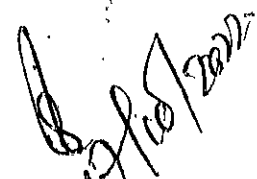
**NOW, THEREFORE**, in exercise of the powers, conferred upon the undersigned (Sofia Tabassum DEO Female Swabi) under Section 4(1) (b)(iii) of the Khyber Pakhtunkhwa (Efficiency & Discipline) rules, 2011, the Competent Authority is pleased to impose the major penalty of "**Removal from Service**" upon **Syed Adnan Ali Shah**, Chowkidar Govt. Girls High School Jagan Naath, Swabi **with immediate effect**.

(SOFIA TABASSUM)  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Endst:No. 2814-6 /Dated Swabi the:- 17/10/2022.

Copy of the above is forwarded for information and n/action to the:-

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner, Swabi
3. District Accounts Officer Swabi.
4. District Monitoring Officer (DMO) Swabi.
5. Principal, GGHS Jagan Naath, Swabi.
6. **Syed Adnan Ali Shah**, Chowkidar Govt. Girls High School Jagan Naath, Swabi, Under Registered cover.
7. Master file:

  
DISTRICT EDUCATION OFFICER  
(FEMALE) SWABI

Annexure - 9 (13)

2023 S C M R 866

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, C.J., Ijaz Ul Ahsan and Sayyed Mazahar Ali Akbar Naqvi, JJ

KIRAMAT KHAN---Petitioner

Versus

IG, FRONTIER CORPS and others---Respondents

Civil Petition No. 3287 of 2019, decided on 18th August, 2022.

(Against judgment dated 25.07.2019 of Federal Service Tribunal, Islamabad, passed In Appeal No.388(P)CS of 2019)

**(a) Limitation Act (IX of 1908)---**

---S. 14---Exclusion of time of proceeding bona fide in Court without jurisdiction---Scope---In order to avail the benefit of section 14 of the Limitation Act, 1908 it is imperative that a litigant seeking benefit of the said provision must show that he was prosecuting his remedy with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it---Material words are "due diligence" and "good faith" in prosecuting a remedy before a wrong forum---Term "due diligence" entails that a person takes such care as a reasonable person would take in deciding on a forum to approach.

**(b) Frontier Corps Ordinance (XXVI of 1959)---**

---Preamble---Service Tribunals Act (LXX of 1973), S. 4---Service Tribunal, jurisdiction of---Employees of the Frontier Corps---Such employees shall be governed under the provisions of Frontier Corps Ordinance, 1959 and for the limited purpose would enjoy the status of civil servants---As such, they could avail their remedies before the (Service) Tribunal for redressal of their grievances.

IG, HQ Frontier Corps v. Ghulam Hussain 2004 SCMR 1397 and Commandant, Frontier Constabulary v. Gul Raqib Khan 2018 SCMR 903 ref.

**(c) Limitation---**

---Void order---Limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law.

Parvez Musharraf v. Nadeem Ahmed (Advocate) PLD 2014 SC 585; Muhammad Sharif v. MCB Bank Limited 2021 SCMR 1158 and Wajdad v. Provincial Government 2020 SCMR 2046 ref.

Zia ur Rehman Tajik, Advocate Supreme Court for Petitioner.

Nasir Mehmood, Advocate Supreme Court for Respondents.

Date of hearing: 18th August, 2022.

**ORDER**

**IJAZ UL AHSAN, J.**---The petitioner seeks leave to appeal against a judgment of the Federal Service Tribunal, Islamabad ("the Tribunal") dated 25.07.2019. Through the impugned judgment, Appeal No.388(P)CS of 2019 filed by the petitioner was dismissed in limine having been found to be barred by time.

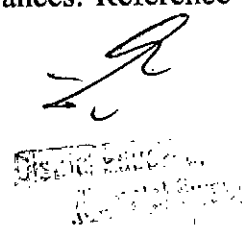
2. Briefly stated the facts of the case are that the petitioner was working with Khyber Rifles in the rank of Naik. On 26.07.2017, he was performing his duty as Signal Operator at Shaheed More Check Post, Torkham when a person named Amir Din son of Tikka Khan Shinwari was arrested and a sum of 10,000 US Dollars was recovered from him. The concerned Subedar directed the petitioner to keep the accused under his watch. However, later the accused was directed to be released. Subsequently, the said Amir Din complained that a sum of 2000 US Dollars had unlawfully been

retained by officials of Khyber Rifles. The petitioner was put behind bars/quarter guard for 4 months and 12 days and was also demoted to the rank of Lance Naik. Upon his release, the petitioner preferred a departmental appeal and thereafter a constitutional petition bearing No.2267 of 2018 before the Peshawar High Court, Peshawar. The constitutional petition was dismissed for want of jurisdiction, vide order dated 25.02.2019 with an observation that he was at liberty to approach the appropriate forum. The petitioner therefore filed an appeal bearing No.388(P)CS of 2019 before the Tribunal on 28.03.2019, which was found to have been filed beyond the period of limitation and was dismissed in limine vide impugned judgment dated 25.07.2019.

3. The learned ASC for the petitioner at the very outset tried to argue the case on merits. It was however pointed out to him that the Tribunal had dismissed the petitioner's appeal in limine after recording findings that his departmental appeal before the competent authority as well as service appeal before the Tribunal were barred by time. He was therefore directed to address arguments to show either that the said appeals were not barred by time or if at all they were barred by time, it was a fit case for condonation of delay which the competent fora had failed to do. The attention of the learned ASC was drawn to the application for condonation of delay moved before the Tribunal. In the said application, the only ground taken for seeking condonation of delay was that the petitioner had invoked the jurisdiction of the High Court under the bona fide belief that it was the correct forum and therefore he could not approach the Tribunal in time. It was prayed that the period of time spent before the wrong forum may be condoned and the appeal may be decided on merits. The learned ASC has reiterated the said ground. In addition, he has argued that the departmental appeal was filed after the petitioner had been released from custody in the quarter guard for 4 months and 12 days, although he had not moved an application for condonation of delay before the competent authority. The learned ASC has finally relied upon *Managing Director, Sui Northern Gas Company Ltd, Karachi v. Ghulam Abbas and others (2003 PLC (C.S.) 796)* and *Province of Sindh and others v. Ghulam Fareed and others (2014 SCMR 1189)* to argue that this Court encourages decisions on merits rather than non-suiting the parties on technicalities and that no limitation runs against a void order.

4. We have heard the learned counsel for the petitioner and carefully examined the case record. We have also considered his arguments and gone through the judgments of this Court cited by him. The learned ASC for the petitioner has admitted that the departmental appeal filed by the petitioner was barred by time. He has however tried to explain that the appeal was filed immediately after his release from custody on 29.11.2017. We note that the appeal was filed on 06.01.2018. The learned ASC has not been able to explain why the appeal was not immediately filed after his release and despite the fact that it was already barred by time the petitioner consumed approximately another two weeks to file an appeal and that too without an application for condonation of delay explaining the reason for every day of delay as required under the law.

5. The learned ASC has also admitted that the appeal of the petitioner before the Tribunal was barred by time. He has however argued that he was pursuing a remedy before the High Court under the bona fide belief that he was before a right forum. In order to avail the benefit of section 14 of the Limitation Act, 1908 it is imperative that a litigant seeking benefit of the said provision must show that he was prosecuting his remedy with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. The material words are, "due diligence and good faith" in prosecuting a remedy before a wrong forum. The term "due diligence" entails that a person takes such care as a reasonable person would take in deciding on a forum to approach. The learned ASC has attempted to argue that the law was unclear and there was ambiguity regarding the forum which the employees of Frontier Corps could approach for redressal of their grievances and that such confusion was ultimately resolved by this Court through a judgment reported as *IG, HQ Frontier Corps v. Ghulam Hussain (2004 SCMR 1397)* in which it was held that employees of the Frontier Corps shall be governed under the provisions of Frontier Corps Ordinance, 1959 and for the limited purpose would enjoy the status of civil servants. As such, they could avail their remedies before the Tribunal for redressal of their grievances. The argument of the learned ASC for the petitioner is fallacious. This Court had as far back as 2004 clarified the law on the subject and held that employees of Frontier Corps will be deemed to be civil servants for the purpose of approaching the Tribunal for redressal of their grievances. Reference in this regard may be made to



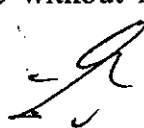
IG, HO Frontier Corps v. Ghulam Hussain (2004 SCMR 1397). The subsequent judgment reported as Commandant, Frontier Constabulary v. Gul Raqib Khan (2018 SCMR 903) merely reaffirmed the earlier judgment. In view of the fact that there was no confusion or ambiguity in the law, the argument of learned ASC that the petitioner was bona fide availing a remedy with due diligence before a wrong forum and should therefore be granted the benefit of Section 14 of the Limitation Act holds no water.

6. Adverting to the argument of learned ASC for the petitioner that there is no limitation against a void order, we find that in the first place, the learned ASC has not been able to demonstrate before us how the order of dismissal was a void order. In addition, this Court has repeatedly held that limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law. This principle has consistently been upheld, affirmed and reaffirmed by this Court and is now a settled law on the subject. Reference in this regard may be made to Parvez Musharraf v. Nadeem Ahmed (Advocate) (PLD 2014 SC 585) where a 14 member Bench of this Court approved the said Rule. Reference in this regard may also be made to Muhammad Sharif v. MCB Bank Limited (2021 SCMR 1158) and Wajdad v. Provincial Government (2020 SCMR 2046).

7. In view of the fact that we have found that the departmental appeal as well as the service appeal of the petitioner were barred by time and no valid or lawful reason for condonation of delay was given and that the benefit of section 14 of the Limitation Act was not available to the petitioner, we do not feel the necessity of discussing the merits of the case.

8. Even otherwise, the learned ASC for the petitioner has not been able to show us any legal or jurisdictional defect or error in the impugned judgment of the Tribunal that may furnish basis, ground or justification for grant of leave to appeal in the matter. Further, we also find that no question of law of public importance within the contemplation of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been raised through this petition. This petition is found to be without merit and is accordingly dismissed. Leave to appeal is refused.

MWA/K-1/SC  
dismissed.



Petition

Dist. J. ...  
11/2023