

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)  
FAREEHA PAUL ... MEMBER (Executive)

*Service Appeal No. 4519/2021*

Zahid Wali S/O Muhammad Wali, R/O Village Lakki Kalla Tehsil  
Takht-e-Nasrati, District Karak. (Appellant)

Versus

The Secretary Agriculture, Livestock, Government of Khyber  
Pakhtunkhwa, at Peshawar and 02 others. (Respondents)

Present:

Mr. Muhammad Saeed Khattak, Advocate.....For the appellant  
Mr. Muhammad Jan, District Attorney .....For the respondents

.....  
Date of presentation of Appeal.....31.03.2021  
Date of Hearing.....23.11.2023  
Date of Decision.....23.11.2023

**JUDGMENT**

**SALAH-UD-DIN, MEMBER:** Precise facts giving rise to filing of the instant appeal are that the appellant, while serving as Veterinary Assistant in Civil Veterinary Dispensary Malgeen District Kohat, was proceeded against departmentally on the allegations of willful absence from duty with effect from 29.06.2008 and was awarded major penalty of removal from service vide order dated 25.01.2017. The appellant preferred departmental appeal on 17.02.2017, which remained un-responded within the statutory period of 90 days, hence the instant appeal.

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 as well as factual objections.

3. Learned counsel for the appellant while criticizing the impugned order has contended that no show-cause notice, charge sheet or statement of allegations was issued to the appellant and whole of the



proceedings were conducted at his back without providing him any opportunity of personal hearing as well as self defence. He next argued that the appellant was awarded major penalty without conducting any regular inquiry in the matter and the impugned order is, therefore, not sustainable in the eye of law. He further argued that absence of the appellant from duty was not intentional rather the same was due to serious threats to life of the appellant on account of enmity. He next contended that the appellant had allegedly remained absent from duty with effect from 29.06.2008, therefore, he was to be proceeded under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000, however the impugned order has been passed under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He next contended that the impugned order is void, therefore, no limitation would run against the same. He further contended that law favours adjudication on merit by avoiding technicalities, therefore, the delay in filing of the service appeal in hand is condonable. In the last, he requested that the impugned order may be set-aside and the appellant may be reinstated in service with all back benefits.



4. On the other hand, learned District Attorney for the respondents contended that the appellant remained absent from duty with effect from 29.06.2008 till his removal from service vide order dated 25.01.2017. He next contended that the appellant had remained absent from duty for more than 09 years and no plausible reason has been furnished by him regarding his long unauthorized absence from duty. He further contended that the appellant had actually went abroad and remained willfully absent from duty, therefore, he was proceeded against under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and was removed from service. He next argued that the appellant did not appear for joining duty despite issuing of notice as well as publication in the newspaper, therefore, he was proceeded against ex-parte. He further argued that the appellant has not put forward any plausible reason for

delay in lodging of the appeal in hand, therefore, the appeal in hand is liable to be dismissed on the ground of limitation alone.

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 the appellant was removed from service vide impugned order dated 25.01.2017 on the allegation of willful absence from duty with effect from 29.06.2008. The appellant had filed departmental appeal on 17.02.2017, which remained un-responded, therefore, he was required to have filed service appeal before this Tribunal within 30 days after a lapse of 90 days of filing of the departmental appeal. The appellant, however remained in deep slumber and filed the instant appeal on 31.03.2021, which is badly barred by time. 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 question of limitation was nothing more but a technicality, which is an incorrect approach. 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.

7. 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 25.01.2017 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).”*

8. Moreover, even void orders are required to be challenged within period of limitation provided by law. Supreme Court of Pakistan in its judgment reported as 2023 SCMR 866 has held as below:-



*“6. Adverting to the arguments 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). (Emphasis supplied)*


9. It is well settled that law favours the diligent and not the indolent. The appellant remained indolent and did not agitate the matter before the Service Tribunal within the period prescribed under the relevant law. This Tribunal can enter into merits of the case only, when the appeal is within time. 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.

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

ANNOUNCED

23.11.2023

  
(FARIEHA PAUL)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

*\*Naeem Amin\**

ORDER  
23.11.2023

Learned counsel for the appellant present. Dr. Noor Badshah, Veterinary Officer alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

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

ANNOUNCED  
23.11.2023



(Hareeha Paul)  
Member (Executive)



(Salah-Ud-Din)  
Member (Judicial)