

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No. 1322/2017

Muhammad Zaeem, Ex: Constable (No. 293), Police Lines Swabi,
District Swabi (Appellant)

Versus

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02
others. (Respondents)

Present:

Mr. Umer Farooq Mohmand, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor the respondents

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Date of presentation of Appeal.....17.11.2017
Date of Hearing.....24.11.2023
Date of Decision.....24.11.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts giving rise to filing of the instant appeal are that the appellant, while posted at Police Station Parmoli District Swabi, had remained absent from duty with effect from 23.10.2013, therefore, departmental action was taken against him. On conclusion of the inquiry, he was awarded major punishment of dismissal from service vide order bearing OB No. 665 dated 28.05.2014. The departmental appeal of the appellant was also rejected vide order dated 08.08.2014, where-after he preferred petition before the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which was also filed vide order dated 20.10.2017, 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 argued that father of appellant was suffering from Cancer and as the appellant had to attend him, therefore, his absence from duty could not be considered as willful. He next argued that the appellant was not issued charge sheet as well as statement of allegations and he was deprived of opportunity of personal hearing as well as self defence. He further contended that absence of the appellant from duty does not tantamount to gross misconduct, therefore, awarding him major punishment of dismissal from service was too harsh. He next contended that the impugned order of dismissal of the appellant was passed with retrospective effect, therefore, the same is void and the bar of limitation would not be attracted. In the last he contended that as the impugned orders are wrong and illegal, therefore, the same 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 was member of a disciplined force, however he remained absent from duty for considerable long period without even bothering to inform his high-ups. He next contended that charge sheet as well as statement of allegations were issued to the appellant on 30.01.2014 and he was personally served but he did not even bother to attend the inquiry proceedings, therefore, ex-parte action was taken against




him. He further contended that conduct of the appellant would show that he was not at all interested in service and deliberately avoided even joining of the inquiry proceedings. He also contended that the departmental appeal of the appellant was rejected vide order dated 08.08.2014 where-after he remained mum for considerable long period and then submitted a petition before the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which was declined vide order dated 20.10.2017 on the ground that the same was barred by three years. In the last he contended that proper regular inquiry was conducted in the matter by complying all legal and coal formalities, therefore, the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.



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 while posted at Police Station Parmoli District Swabi, the appellant was proceeded against departmentally on the allegations of absence from duty with effect from 23.10.2013. The appellant was awarded major punishment of dismissal from service vide order bearing OB No. 665 dated 28.05.2014. The appellant filed departmental appeal, however the same was rejected vide order dated 08.08.2014 passed by Deputy Inspector General of Police, Mardan Region-I, Mardan. The appellant was required to have challenged the aforementioned order dated 08.08.2014 by preferring revision petition before the Inspector General of Police Khyber Pakhtunkhwa, Peshawar within a period of 30 days, however the said petition was filed after

considerable day of about three years and was thus dismissed vide order dated 20.10.2017 being 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 him is that question of limitation was nothing more but a technicality, which is an incorrect approach. 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.



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 08.05.2014 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. The revision petition filed by the appellant before the Inspector General of Police Khyber Pakhtunkhwa, Peshawar was badly time barred, therefore, the instant appeal is not competent. Window in this respect derived from 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 S.C 951. Moreover, this Tribunal can enter into merits of the case only, when the appeal is competent.

9. In view of the above discussion, 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
24.11.2023


(FARIEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Naeem Amin

ORDER
24.11.2023

Learned counsel for the appellant present. 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 stands dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
24.11.2023



(Fareeha Paul)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

Naeem Amin