

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

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

*Service Appeal No. 1434/2018*

Allah Nawaz S/O Allah Diwaya, Caste Baloch, R/O Kotla Saidan, Tehsil & District D.I.Khan. (Deceased) through L.Rs namely 1.Mst. Naseem Bibi (Widow), 2. Bilal Haider, 3. Gulfam Haider and 4. Irfan Haider (Sons) R/O Caste Baloch, R/O Kotla Saidan, Tehsil & District Dera Ismail Khan. (Appellants)

Versus

Government of Khyber Pakhtunkhwa, through Secretary Board of Revenue Khyber Pakhtunkhwa, Peshawar and 06 others. (Respondents)

Present:

Mr. Khalid Mehmood, Advocate.....For the appellant  
Mr. Muhammad Jan, District Attorney .....For the respondents

Date of presentation of Appeal.....28.11.2018  
Date of Hearing.....22.11.2023  
Date of Decision.....22.11.2023

**JUDGMENT**

**SALAH-UD-DIN, MEMBER:** Precise facts giving rise to filing of the instant appeal are that the deceased appellant was serving as Patwari, who was charged in case FIR No. 2 dated 07.05.2013 under Sections 419/420/468/471 PPC read with Section 5 (2) PC Act Police Station ACE D.I.Khan, case FIR No. 07 dated 20.05.2011 under Sections 419/420/468/471 of PPC read with Section 5 (2) of PC Act Police Station Anti-Corruption Establishment, D.I.Khan as well as case FIR No. 6 dated 08.04.2011 under Sections 468/471 PPC read with Section 5 (2) of the PC Act Police Station Anti-Corruption

Establishment D.I.Khan. Vide judgment dated 13.05.2015 passed by Special Judge Anti-Corruption Southern Districts, Camp Court Dera Ismail Khan, the appellant was acquitted in case FIR No. FIR No. 6 dated 08.04.2011 under Sections 468/471 PPC read with Section 5 (2) of the PC Act Police Station Anti-Corruption Establishment D.I.Khan, however he was declared as proclaimed offender in case FIR No. 2 dated 07.05.2013 under Sections 419/420/468/471 PPC read with Section 5 (2) PC Act Police Station Anti-corruption Establishment D.I.Khan as well as case FIR No. 07 dated 20.05.2011 under Sections 419/420/468/471 of PPC read with Section 5 (2) of PC Act Police Station Anti-Corruption Establishment, D.I.Khan. The appellant was proceeded against departmentally on the allegations of absence from duty with effect from 01.03.2016 and was dismissed from service vide order dated 21.10.2016. The departmental appeal of the appellant was declined vide order dated 31.10.1018 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.

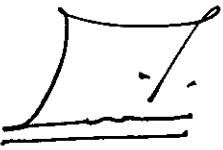
3. It is pertinent to mention here that the appellant was died during the pendency of the instant appeal, and his L.Rs were thus impleaded as appellants vide order dated 16.12.2021.

4. Learned counsel for the deceased appellant contended that departmental action was taken against the appellant on the allegations of willful absence from duty, however no notice was issued to him

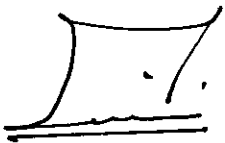


through registered AD at his home address as required under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. He next contended that the only penalty as provided in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 is removal from service, however the appellant was awarded penalty of dismissal from service, which is illegal. He further contended that the procedure prescribed in Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 has not been complied with, therefore, the impugned orders are not sustainable in the eye of law. He next argued that whole of the proceedings were conducted at the back of the deceased appellant without providing him any fair chance to defend himself. He further argued that the deceased appellant had filed departmental appeal on 12.09.2017 after getting knowledge of the impugned order dated 21.10.2016 and his departmental appeal was thus within time. He also argued that that the impugned orders are illegal, wrong and unlawful, therefore, the same may be set-aside and the deceased appellant may be notionally reinstated in service for the purpose of financial benefits to be received by his L.Rs in shape of family pension.

5. On the other hand, learned District Attorney for the respondents contended that the deceased appellant was having a tainted service career and remained involved in three cases of corruption registered against him in Police Station Anti-Corruption Establishment D.I.Khan. He next contended that the deceased appellant was facing trial in case FIR No. 2 dated 07.05.2013 under Sections



419/420/468/471 PPC read with Section 5 (2) of the PC Act Police Station ACE D.I.Khan as well as case FIR No. 07 dated 20.05.2011 under Sections 419/420/468/471 of PPC read with Section 5 (2) of PC Act Police Station Anti-Corruption Establishment, D.I.Khan, in which the co-accused Muhammad Pervaiz was convicted, while the deceased appellant had went into hiding, therefore, he was declared as proclaimed offender vide order dated 22.03.2016. He further contended that vide order dated 22.03.2016 passed by Special Judge Anti-Corruption Southern Districts, Camp Court D.I.Khan, the appellant was declared as proclaimed offender in another case registered vide FIR No. 2 dated 07.05.2013 under Sections 419/420/468/471 PPC read with Section 5 (2) PC Act Police Station ACE D.I.Khan. He next argued that the appellant was given notice but he failed to appear, therefore, absence of the appellant from duty was admitted by him in his appeal. Show-cause notice was issued to him through publication in two daily newspapers as required under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 but he remained absent from duty. He next contended that willful absence from duty has not been denied by the deceased appellant. He further argued that the deceased appellant had remained absent from duty for considerable long period, however he failed to put forward any justification either in his departmental appeal or in the instant appeal. He also argued that the impugned order of dismissal from service was passed on 21.10.2016, while the deceased appellant had filed departmental appeal on 12.09.2017, which was



badly time barred and his appeal is thus liable to be dismissed on this score alone.

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

7. A perusal of the record would show that departmental action was taken against the deceased appellant on the allegations of absence from duty and he was dismissed from service vide the impugned order dated 21.10.2016. He was required to have filed departmental appeal within a period of 30 days, however he filed departmental appeal on 12.09.2017 i.e after a delay of more than 10 months, which was badly time barred. The deceased appellant was declared as proclaimed offender vide orders dated 22.03.2016 and 19.04.2016 passed by the Additional Special Judge, Anti-Corruption Southern Districts, Camp Court Dera Ismail Khan in case FIR No. 2 dated 07.05.2013 under Sections 419/420/468/471 PPC read with Section 5 (2) PC Act Police Station ACE D.I.Khan as well as case FIR No. 07 dated 20.05.2011 under Sections 419/420/468/471 of PPC read with Section 5 (2) of PC Act Police Station Anti-Corruption Establishment, D.I.Khan and he was unable to put forward any plausible explanation for delay in lodging of the departmental appeal. 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. 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.

8. 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. The departmental appeal of the appellant was time barred, therefore, the instant appeal is not competent. Windom 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. As a sequel to 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

22.11.2023



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)



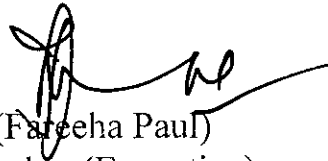
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)

ORDER  
22.11.2023

Learned counsel for legal heirs of deceased appellant present. Mr. Ghulam Shabir, Assistant Secretary and Mr. Amanullah, District Kanoongo 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 stands dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
22.11.2023



(Fareeha Paul)  
Member (Executive)



(Salah-Ud-Din)  
Member (Judicial)