

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No. 1106/2019

Muhammad Tariq, Ex-Constable No. 710, Police Lines, Bannu.
(Appellant)

Versus

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and
02 others. (Respondents)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor respondents

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Date of presentation of Appeal.....20.08.2019
Date of Hearing.....22.01.2024
Date of Decision.....22.01.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts giving rise to the instant appeal are that the appellant was proceeded against departmentally on the allegations of absence from duty with effect from 23.01.2012 as well as his involvement in case FIR No. 20 dated 27.01.2012 under sections 365/34 PPC Police Station Domel, District Bannu and case FIR No. 219 dated 0.09.2013 under sections 302/324 PPC Police Station Domel District Bannu. On conclusion of the inquiry, he was awarded major punishment of dismissal from service vide order bearing OB No. 727 dated 08.09.2016. The penalty so awarded to him, was challenged by the appellant through filing of departmental appeal, however the



same was also rejected vide order dated 24.07.2019, 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 contended that the appellant was falsely charged in case FIR No. 20 dated 27.01.2012 under sections 365/34 PPC as well as case FIR No. 219 dated 07.09.2013 under sections 302/324 PPC Police Station Domel District Bannu and his acquittal in the aforementioned cases have affirmed his innocence. He next contended that the inquiry officer had recommended in his inquiry report that the inquiry proceedings against the appellant may be kept pending till final decision of the criminal case but even then major penalty of dismissal from service was wrongly and illegally awarded to the appellant. He further contended that neither any show-cause notice nor any charge sheet or statement of allegations were issued to the appellant and he was awarded the impugned major penalty of dismissal from service without any regular inquiry, therefore, the impugned orders are liable to be set-aside. He also contended that whole of the proceedings were carried out at the back of the appellant and he was not provided any opportunity of self defence as well as personal hearing, therefore, the impugned orders are nullity in the eye of



law. He next argued that the appellant was awarded major penalty of dismissal from service with retrospective effect, therefore, the impugned order dated 08.09.2016 passed by the competent Authority is void ab-initio. He also argued that disciplinary action was taken against the appellant on account of his involvement in the criminal cases, however the appellant has already been acquitted by competent court of law, therefore, the very ground on the basis of which he was proceeded against departmentally has vanished away. In the last he argued that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits. Reliance was placed on PLD 2010 Supreme Court 695, PLJ Tr.C (Services) 6 and PLJ 2017 Tr.C. (Services) 198.

4. On the other hand, learned District Attorney for the respondents contended that departmental proceedings were initiated against the appellant on account of his absence from duty as well as his involvement in case FIR No. 20 dated 27.01.2012 under sections 365/34 PPC and case FIR No. 219 dated 07.09.2013 under sections 302/324 PPC Police Station Domel District Bannu. He next contended that charge sheet as well as statement of allegations were issued to the appellant, however the appellant had gone into hiding after his involvement in the criminal case, therefore, the same could not be served upon him. He further contended that the appellant was deliberately avoiding his lawful arrest and was declared as proclaimed offender by competent court of law in both the criminal cases registered against him. He also contended that in para-3 of

memorandum of appeal, the appellant has himself admitted his absence from lawful duty. He next argued that criminal as well as departmental proceedings can run parallel and mere acquittal of the appellant in the criminal cases could not be considered as a ground for his exoneration from the charges leveled against him in the departmental proceedings. He further argued that the departmental appeal of the appellant was dismissed vide order dated 24.07.2019 being barred by 33 months, therefore, the appeal in hand is not competent and is liable to be dismissed on this score alone. He also argued that the delay in lodging of departmental appeal was due to the reason that the appellant was fugitive from law, therefore, condonation of such delay would be granting him premium of his abscondence. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost. Reliance was placed on 2017 SCMR 965 and 2011 PLC (C.S) 990.

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

6. The appellant was dismissed from service vide order bearing O.B No. 727 dated 08.09.2016, which was required to have been challenged by the appellant through filing of departmental appeal within 30 days. The appellant, however filed departmental appeal after considerable delay, which was dismissed vide order dated 24.07.2019 being barred by 33 months. 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 merits of the case.

7. It is well settled proposition of law that when an appeal of an employee was time barred before the appellate Authority, then the appeal before the Tribunal was also not competent. Reliance in this respect is placed on 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 S.C 951. Moreover, 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.

8. In view of the above discussion, it is held that as the departmental appeal of the appellant was badly time barred, therefore, 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
22.01.2024


(KALIM ARSHAD KHAN)
CHAIRMAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Naeem Amin


ORDER
22.01.2024

Appellant alongwith his counsel 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, it is held that as the departmental appeal of the appellant was badly time barred, therefore, 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
22.01.2024


(Kalim Arshad Khan)
Chairman


(Salah-Ud-Din)
Member (Judicial)