

26th Apr. 2024

1. Nobody is present on behalf of the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Bench is incomplete. Therefore, case is adjourned. Office is directed to telephonically inform the appellant/counsel for the next date. To come up for arguments on 27.05.2024 before D.B at Camp Court, Abbottabad. P.P given to the parties.

*Mutazem Shah *

(Muhammad Akbar Khan)
Member (E)
Camp Court, A/Abad

S.A No.1234/2018

ORDER

27th May. 2024

1. Learned counsel for the appellant and Mr. Shoaib Ali, Assistant Advocate General for the respondents present.

2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed being bared by time. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 27th day of May, 2024.*

Mutazem Shah

(Muhammad Akbar Khan)
Member (E)
Camp Court, Abbottabad

(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

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. Therefore, instant service appeal is dismissed being bared by time. Costs shall follow the event. Consign.

8. Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 27th day of May, 2024.



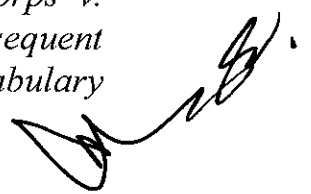
KALIM ARSHAD KHAN
Chairman
Camp Court, Abbottabad



MUHAMMAD AKBAR KHAN
Member (Executive)
Camp Court, Abbottabad

"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



appeal on 06.08.2017 which was rejected on 06.05.2018, therefore, he filed the instant service appeal on 25.08.2018.

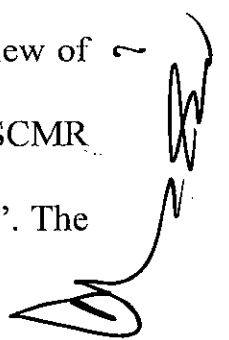
2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General, controverted the same by supporting the impugned order(s).

5. The impugned order was passed on 11.07.2017, against which, the appellant filed departmental appeal on 06.08.2017 but has filed the instant service appeal on 25.08.2018, which is barred by time.

6. The appellant has filed an application for condonation of delay mainly on the grounds that fiscal matter was involved and such matters are always considered as those having recurring cause of action, therefore, the delay should be condoned. This contention of the learned counsel for the appellant is not acceptable in view of judgment of the Supreme Court of Pakistan reported as 2023 SCMR 866 titled "Kirama Khan versus IG Frontier Corps and others". The relevant portions of the judgment are as under:



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**

Service Appeal No.1234/2018

Date of presentation of Appeal.....25.08.2018
Date of Hearing.....27.05.2024
Date of Decision.....27.05.2024

Rustam Khan, Forest Guard, presently at the office of DFO Siran,
District Mansehra.....(*Appellant*)

Versus

1. **Provincial Government of Khyber Pakhtunkhwa** through Secretary Forest Department, Peshawar.
2. **Conservator of Forests**, Lower Hazara Forest Circle, Abbottabad.
3. **Divisional Forest Officer**, Siran Forest Division Mansehra.
4. **Range Forest Officer**, Hill Kot Forest Range Batal District Mansehra.....(*Respondents*)

Present:

Mr. Sultan Ahmad Jamshaid, Advocate.....For the appellant
Mr. Shoaib Ali, Assistant Advocate General.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 VIDE WHICH THE APPEAL OF THE APPELLANT PREFERRED TO RESPONDENT NO.2, AGAINST THE ORDER OF RESPONDENT NO.3, WHO HAD IMPOSED THE PENALTY OF ONE STAGE BELOW IN TIME SCALE FOR A PERIOD OF ONE YEAR, IS REJECTED VIDE ORDER NO.23 DATED ABBOTTABAD, THE 02.05.2018.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in brief is that appellant was serving in the Forests Department; that vide impugned order dated 11.07.20217, he was awarded major penalty of reduction of pay of one stage below in time scale for a period of one year; that feeling aggrieved, he filed departmental