

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1108/2018

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN... MEMBER (E)

Aman Ullah, Ex-Constable No. 1624, S/o Mirza Ali Khan Village Shubli
Banda Tehsil Takht Nusrati District Karak.

... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent of Police FRP Kohat Range Kohat.

.... (Respondents)

Miss. Uzma Syed,
Advocate

For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

For respondents

Date of Institution.....29.08.2018

Date of Hearing29.04.2024

Date of Decision29.04.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has
been instituted under Section-4 of the Khyber Pakhtunkhwa Service
Tribunal Act, 1974 with the following prayer:-

“That on acceptance of this appeal, the order dated 31.12.2010 not communicated to the appellant and 26.07.2018 may be set aside and the appellant may be reinstated with all back and consequential benefits. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

2. Precise facts giving rise to filing of the instant appeal are that the appellant was appointed as Constable in Police Department in the year 2007. Departmental proceedings were initiated against the appellant on



the allegations that he absented himself from his official duty with effect from 14.03.2009 without any leave or permission of the competent authority. On conclusion of the inquiry, the appellant was discharged from service from the date of his absence vide impugned order dated 02.10.2009. The appellant filed departmental appeal on 12.07.2018, which was rejected vide order dated 26.07.2018. The appellant has now approached this Tribunal through filing of instant service appeal on 29.08.2018 for redressal of his grievances.

3. Respondents were put on notice who submitted their reply on the appeal.

4. Learned counsel for the appellant has argued that due to his some domestic problems as well as illness of his mother, he was unable to attend his duty, therefore, his absence was not intentional rather the same was due to the said reasons. He next argued that the appellant was discharged from service from the date of his absence vide impugned order dated 02.10.2009 with retrospective effect, therefore, the impugned order dated 02.10.2009 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 02.10.2009 was passed with retrospective effect, therefore, no limitation would run against the impugned order. He also argued that the appellant was neither issued any charge sheet/statement of allegations or show-cause notice nor any inquiry was conducted in the matter, therefore, he was condemned unheard. In the last, he requested that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.



5. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellant remained absent from duty for a long period of 202 without prior permission of the competent authority. He next contended that appellant was issued charge sheet alongwith summery of allegations and was also conducted inquiry in the matter but the appellant failed to reply the charge sheet. He further contended that the appellant was also failed to appear before the inquiry officer despite being summoned. He also contended that the departmental appeal as well as service appeal of the appellant are badly time barred, therefore, the appeal in hand is liable to be dismissed on this score alone.

6. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

7. We will have to decide first that whether impugned order passed by the competent authority vide which the appellant has been discharged from service with retrospective effect is void ab-initio and no limitation would run against the same. In our humble view this argument of the learned counsel for the appellant 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. Appellant was discharged from service from the date of absence i.e 14.03.2009 vide order dated 21.10.2009, which was required to have been challenged through filing of departmental appeal within 15



days but the appellant filed departmental appeal on 12.07.2018 i.e after a delay of 08 years, 04 months and 04 days, which was badly time barred. The departmental appeal of the appellant was rejected being time barred for about 09 years vide order dated 26.07.2018. 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 bearing on merit of the case.

10. 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 departmental authority and 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.

11. Consequently, it is held that as the departmental appeal of the appellant was barred by time, 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.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of April, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

22.04.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali

Shah learned Deputy District Attorney for the respondents present.

2. Learned counsel for the appellant requested for adjournment in

order to further prepare the brief. Absolute last chance is given to

argue the case on the next date, failing which case will be decided

on the basis of available record without providing further

adjournments and chance of arguments. Adjourned. To come up for

arguments on 29.04.2024 before D.B. P.P given to parties.

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

Kaleemullah
ORDER

29th April, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, it is held that as the departmental appeal of the appellant was barred by time, 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.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 29th day of April, 2024.*

(Muhammad Akbar Khan)
~~(Fareeha Paul)~~
Member (Executive)


(Rashida Bano)
Member (Judicial)


10th Nov, 2023

1. Clerk to counsel for the appellant present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for the respondents present.

2. Clerk to counsel for the appellant requested for adjournment on the
ground that learned counsel for the appellant is not available today.
Adjourned. To come up for arguments on 22.02.2024 before D.B. P.P
given to the parties.

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(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)

22nd Feb, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali
Shah, Deputy District Attorney for the respondents present.

2. These cases involve question of grant of retrospective effect to
the impugned orders. Most of these cases are pending since 2018,
therefore, the learned counsel were requested to give a date of their own
choice, so that a last chance be given to all of the parties and their counsel
to argue these appeals on the said date of their choice. The learned counsel,
after consultation with each other, agreed that matters may be fixed for
22.04.2024. Adjourned accordingly to the above date, the date is given on
their own choice with the observation that no further adjournment will be
granted on any ground and in case any of the learned counsel could not
argue, the other counsel would argue and the cases would be decided
forthwith. And in case again further adjournment is sought, all the matters
shall be deemed to have been adjourned sine-die. In that eventuality, the
counsel or parties whenever desirous to argue may make an application
for restoration of the appeals to get those argued and decided. P.P given to
the parties.


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Adnan Shah