

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1564/2018

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

Muhammad Hamayun, Ex-Constable No. 173 District Police Mardan.
... (Appellant)

VERSUS

1. Regional Police Officer Mardan.
2. District Police Officer Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
.... (Respondents)

Miss. Uzma Syed,
Advocate --- For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney --- For respondents

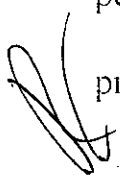
Date of Institution.....28.12.2018
Date of Hearing29.04.2024
Date of Decision29.04.2024

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:-

“On acceptance of this appeal the impugned orders dated 31.01.2014 of respondent No. 1 and Order dated 25.05.2004 of respondent No. 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

2. Precise averments as raised by the appellant in his appeal are that, he joined the Department as Constable on 01.08.1999 and performed his duty with honesty and devotion. Disciplinary proceedings were initiated against the appellant on the allegation that



was granted nine months leave and was due to return back for duty on 21.02.2004 but he failed to report back his arrival on due date and remained absent without any leave or prior permission of the competent authority. On conclusion of the inquiry, the appellant was imposed major penalty of dismissal from service from the date of his absence vide impugned order bearing Endst: No. 1535-42/SB dated 25.05.2004. The appellant preferred departmental appeal, which was rejected vide order dated 31.01.2014, hence the appellant filed the instant service appeal on 28.12.2018 before this Tribunal 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 the absence of the appellant was not deliberated rather the same was due to illness of his wife. He next argued that the appellant was awarded major punishment of dismissal from service vide impugned order dated 25.05.2004 with retrospective effect, therefore, the impugned order dated 25.05.2004 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 25.05.2004 was passed with retrospective effect, therefore, no limitation would run against the impugned order. He next argued that neither any charge sheet/statement of allegations or show-cause notice was issued to the appellant nor any inquiry was conducted in the mater, 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 was granted nine months leave and was due to return back for duty on 21.02.2004 but he failed to report back his arrival on due date and remained absent without any leave or prior permission of the competent authority, which is gross misconduct on the part of the appellant. He next contended that all the legal and codal formalities were fulfilled before passing the impugned orders. He further contended that the appellant failed to avail his legal remedy before the departmental authority as well as before this Tribunal, therefore, the appeal in hand is not competent before this Tribunal being barred by time and 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 awarded punishment of dismissal 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)"

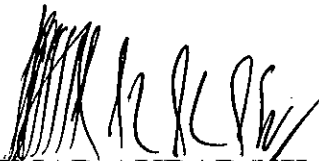
9. Perusal of record reveals that appellant was dismissed from service from the date of his absence 21.02.2004 vide which order dated 25.05.2004 which was required to have been challenged through filing of departmental appeal within 15 days but appellant filed departmental appeal after lapse of long 09 years which is evident from his departmental appeal para-4, which is hopelessly barred by time. Moreover, his departmental appeal was rejected vide order dated 31.01.2014, while instant service appeal was filed on 28.12.2018 after lapse of 04 years, 10 months and 26 days of dismissal of his departmental appeal, which he was required to file within 15 days of passing of appellate authority order dated 31.01.2014. 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 as well as service 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. Arshad Azam learned Assistant Advocate General alongwith Atta Ur Rehman, Inspector 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)


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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 as well as service 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)

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.

SCANNED
KPST
Peshawar

Adnan Shah


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman