

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 565/2016

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

Fakher-e-Imam, Ex-Constable No. 2053, Mohallah Balar Khel, Village & P.O Gumbat, Tehsil & District Mardan.

... (Appellant)

VERSUS

1. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer (DIG), Mardan Region, Mardan.
3. District Police Officer, Mardan.

.... (Respondents)

Mr. Asad Zeb Khan,
Advocate

For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

For respondents

Date of Institution.....24.05.2016
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 the service appeal the impugned order may be set-aside and appellant may be reinstated in service with consequently all back benefits.

Any other remedy deemed proper and just in the circumstances may also be granted.”

2. Precise facts as gleaned from the record are that the appellant was enlisted as Constable in Police Department in the year 2008. He was proceeded against departmentally on the allegation of absence from duty with effect from 30.09.2009 vide impugned order dated



14.10.2013 passed by District Police Officer, Mardan, which was challenged by the appellant through filing of departmental appeal on 14.05.2014, however the same was also rejected vide impugned order dated 08.08.2014 passed by Deputy Inspector General of Police, Mardan Region-I, Mardan. There-after, the appellant filed mercy petition before the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar on 21.10.2015, which was too rejected being badly time barred vide impugned order dated 25.04.2016. The appellant has now approached this Tribunal through filing of instant service appeal on 24.05.2016 for redressal of his grievances.

3. Respondents were put on notice who submitted their para-wise comments on the appeal.

4. Learned counsel for the appellant has argued that the absence of the appellant was not intentional. He next argued that the appellant was awarded punishment of dismissal from service with retrospective effect, therefore, the impugned order dated 14.10.2013 being void ab-initio is liable to be set-aside and even no limitation run against the impugned order of dismissal of the appellant. 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. Conversely, learned Deputy District Attorney for the respondents has contended that the appellant was enlisted as Constable in the year 2008 and was detailed for recruit course/training to PTC, however, he remained absent without any leave or permission of the competent authority till the date of passing of impugned order of dismissal of the appellant dated 14.10.2013. He next argued that as

the departmental appeal as well as mercy petition of the appellant are barred by time, therefore, instant service appeal is not maintainable and is liable to be dismissed on this score alone.

6. We heard the learned counsel for the appellant as well as learned Deputy 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 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. A perusal of record reveals that appellant was dismissed from service vide impugned order dated 14.10.2013 on the allegation of absence from duty with effect from his continuous absence i.e 30.09.2009. Appellant challenged the same in departmental appeal on 14.05.2014, which was rejected on 08.08.2024. Appellant then filed revision petition under section-11 A on 21.10.2015, revisional authority dismissed revision petition being barred by limitation vide order dated 25.04.2016. The appellant was required to file departmental appeal within thirty (30) days of passing of impugned
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order dated 14.10.2013 which he filed on 14.05.2014 after lapse of 07 months. Similarly, he was required to file revision petition within 30 days of passing of order by appellate authority dated 08.08.2014 which he filed on 21.05.2014 after lapse of 09 months and 12 days which was badly barred by time and same was dismissed on the ground of limitation by the revisional authority.

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. In view of the above discussion, 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)


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 Arbab Khan)
~~(Faraha Paul)~~
Member (Executive)


(Rashida Bano)
Member (Judicial)

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)

SCANNED
KALEEMULLAH
POSTER