

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1215/2018

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

Shah Afzal S/O Khan Afzal, R/o Darband Hangu, Ex-Constable No. 196,
Police Line, Hangu.

... (Appellant)

VERSUS

1. District Police Officer, Hangu.
 2. Deputy Inspector General of Police, Kohat Region Kohat.
 3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- (Respondents)

Mr. Arbab Saif-ul-Kamal,
Advocate --- For appellant

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

Date of Institution.....03.10.2018
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 the appeal, orders dated
17.04.2009 and 19.04.2010 of the respondents be set
aside and appellant be reinstated in service with all
back benefits, with such other relief as may be
deemed proper and just in circumstances of the
case.”**

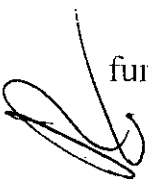
2. Precise facts as alleged by the appellant in his appeal are that,
he was appointed as Constable in Police Department in the year 2007.
Departmental inquiry was initiated against the appellant on the



allegation that he while nominated for Elite Course at Punjab Regiment Mardan absented himself from the said course with effect from 20.08.2008 till issuance of charge sheet without prior permission or leave. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service from the date of absence vide impugned order dated 17.04.2009. The appellant filed departmental appeal, which was filed being time barred vide order impugned order dated 19.04.2010. The appellant filed application before the Provincial Police Officer/Appeal Revision Board, Khyber Pakhtunkhwa, Peshawar on 26.04.2010, which was not responded, therefore, the appellant filed reminder on 18.09.2018, however the same was not responded. The appellant has now filed the instant service appeal before this Tribunal on 03.10.2018 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 appellant was deputed to Elite Course and on return he was directed to report to police line Hangu but he became ill and started his treatment, therefore, his absence was not intentional rather the same was due to his illness. He next argued that the appellant was awarded major punishment of dismissal from service vide impugned order dated 17.04.2009 with retrospective effect, therefore, the impugned order dated 17.04.2009 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 17.04.2009 was passed



with retrospective effect, therefore, no limitation would run against the impugned order. He also argued that neither any notice, charge sheet, final show-cause notice was issued to the appellant nor any inquiry was conducted in the matter, therefore, the impugned orders are illegal and liable to be set-aside.

5. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellant was sent for basic recruit course, however he failed the same. He next contended that the appellant was detailed for Elite course but he deliberately did not attend the said course and reported absent vide Police Lines Hangu, daily diary No. 5 dated 17.08.2008. He further contended that the appellant has neither made his arrival report to his place of posting nor joined the inquiry proceedings. He also argued that the departmental appeal as well as revision petition and service appeal of the appellant are barred by time, therefore, the appeal in hand 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 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. Record reveals that appellant was dismissed from service from the date of his absence i.e 20.08.2008 vide order dated 17.04.2009. As per appellant contention, he filed departmental appeal against the same on 15.05.2009, while respondent denied from filing of departmental appeal within time as his appeal was filed being time barred by the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar vide order dated 19.04.2010. If we consider that the appellant has filed departmental appeal on 15.05.2009 against the impugned order dated 17.04.2009 even then the departmental appeal of the appellant is barred by time as prescribed under Section-9 of Removal from Service (Special Powers) Ordinance, 2000. Appellant filed instant service appeal on 03.10.2018 after lapse of more than 08 years and 05 months which he was required to file within 30 days after expiry of 60 days of filing of departmental appeal. 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. Asif Masood Ali Shah learned Deputy District Attorney alongwith Israr Uddin, 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)


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 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)