

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

**Service Appeal No. 1163/2018**

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

Hameed ur Rehman S/o Abdullah, R/o Deri Ouch, Dir Lower, Ex-Constable  
No. 315 SB, CTD, Peshawar.

... (Appellant)

**VERSUS**

1. Deputy Inspector General of Police, DCT now CTD, Peshawar.
  2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- .... (Respondents)

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Mr. Arbab Saif-ul-Kamal,  
Advocate

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For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

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For respondents

Date of Institution.....18.09.2018  
Date of Hearing .....29.04.2024  
Date of Decision .....29.04.2024

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**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  
14.01.2010 and 25.05.2018 of the respondents be set  
aside and appellant be reinstated in service with all  
consequential/back benefits, with such other relief as  
may be deemed proper and just in circumstances of  
the case.”**

2. Precise averments as raised by the appellant in his appeal are  
that, he was enlisted as Constable in the year 2007. Departmental  
proceedings were initiated against the appellant on the allegation of



willful absence from duty. On conclusion of the inquiry, the appellant was awarded major penalty of removal from service vide impugned order dated 14.01.2010. The appellant filed departmental appeal on 02.02.2010, which was not responded, there-after, the appellant filed another appeal before Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar, however the same was rejected vide order dated 25.05.2018. The appellant has now approached this Tribunal through filing of instant appeal on 18.09.2018 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 the appellant was allowed 05 days casual leave with effect from 07.08.2009 but he could not report back for duty as by the then Swat Valley was in clutches of the miscreants, therefore, his absence was not intentional rather the same was due to the above situation. He next argued that the appellant was awarded major punishment of removal from service vide impugned order dated 14.01.2010 with retrospective effect, therefore, the impugned order dated 14.01.2010 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 14.01.2010 was passed with retrospective effect, therefore, no limitation would run against the impugned order. He also argued that beside the appellant, numerous other officials of the Police Department were also dismissed and they were reinstated in service vide orders dated 30.11.2010, 15.03.2017 and 09.08.2017 but he was



ignored. 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 allowed 05 days casual leave, however he failed to report back for duty. He next contended that departmental proceedings were initiated against the appellant on the allegation of absence from duty and he was issued charge sheet and inquiry committee was also constituted in the matter. He further contended that charge sheet was delivered to the appellant through his father, who disclosed that the appellant has proceeded to Saudi Arabia for laboring, which show gross misconduct on the part of the appellant. He also argued that all the codal formalities were fulfilled before imposing the major penalty of removal from service, therefore, the appeal in hand is liable to be dismissed. In the last he argued that as the departmental appeal 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 removal 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 further reveals that appellant was removed from service from the date of his absence i.e 07.08.2009 vide order dated 14.01.2010 against which he filed departmental appeal on 02.02.2010 as per appellant contention but respondents denied its filing within time. If we consider that the appellant has filed departmental appeal on 02.02.210 against the impugned order dated 07.08.2009 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. Respondents annexed alongwith comments departmental appeal filed by the appellant on 20.07.2017 which was dismissed vide order dated 25.05.2018 being time barred for about 08 years. 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 29<sup>th</sup> 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.

SCANNED  
AT PESHAWAR

(Fareeha Paul)  
Member (E)

(Rashida Bano)  
Member (J)

Kaleemullah  
**ORDER**  
29<sup>th</sup> 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 29<sup>th</sup> day of April, 2024.*

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

(Rashida Bano)  
Member (Judicial)