

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 623/2019

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

Gulab Sher Ex-Constable No. 716 FRP Headquarter Peshawar. ... (Appellant)

VERSUS

1. Deputy Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
2. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Miss. Roccda Khan,
Advocate

--- For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

--- For respondents

Date of Institution.....08.05.2019

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 order dated 02.10.2014 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be onward Tribunal deems fit that may also be granted in favour of appellant.”

2. Precise facts giving rise to filing of the instant appeal are that the appellant while serving in Police Department, was proceeded

against departmentally on the allegations that he was involved in a criminal case vide FIR No. 67 dated 19.01.2014 under sections 406/411/380 PPC PS Gulbarg District Peshawar and remained absent from duty with effect from 25.02.2014 without taking any leave or permission of the competent Authority. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service from the date of absence i.e 25.02.2014 and the period of absence was treated as leave without pay vide impugned order dated 02.10.2014. The appellant preferred departmental appeal on 21.03.2019, which was rejected being badly time barred and meritless, there-after, the appellant filed revision petition, however the same was also rejected vide order dated 16.04.2019. The appellant has now approached this Tribunal through filing of instant appeal before this Tribunal on 08.05.2019 for redressal of his grievances.

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

4. Learned counsel for the appellant has argued that the appellant was falsely implicated in case FIR No. 67 dated 19.01.2014 under sections 406/411/380 PPC PS Gulbarg District Peshawar and was arrested by the local Police on 07.02.2014, therefore his absence was not intentional rather the same was due to the said facts. He next argued that the appellant was dismissed from service vide impugned order dated 02.10.2014 with retrospective effect, therefore, the impugned order dated 02.10.2014 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated

02.10.2014 was passed with retrospective effect, therefore, no limitation would run against the impugned order. 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 without any leave of permission of the competent authority and was found involved in a criminal case vide FIR No. 67 dated 19.01.2014 under sections 406/411/380 PPC PS Gulbarg District Peshawar. He next contended that during the inquiry proceedings, it was found that the appellant was also involved in another case vide FIR No. 72 dated 07.03.2014 under sections 381-A/34 PPC Police Station Sardheri, District Charsadda, therefore, the appellant being a member of discipline force committed gross misconduct. He further contended that all the legal and codal formalities were fulfilled before passing the impugned orders, therefore, he was rightly imposed major penalty of dismissal from service. He also argued that the departmental appeal of the appellant is badly barred by time, therefore, the appeal in hand is not maintainable before this Tribunal 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 first absence i.e 23.02.2014 vide order dated 02.10.2014, which was required to have been challenged through filing a departmental appeal within 30 days but the appellant filed departmental appeal on 21.03.2019 after a delay of more than five years. The departmental appeal of the appellant was rejected being badly time barred vide order dated 10.04.2019. The appellant also filed revision petition, however the same was also rejected on 18.04.2019. 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 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)