

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 457/2022

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

Raham Sher Khan, Ex-Cook Constable No. 577, Police Lines, District Bannu.
... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
 2. The Regional Police Officer, Bannu Region at Bannu.
 3. The District Police Officer, District Bannu.
- (Respondents)

Mr. Uzma Syed,
Advocate

--- For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

--- For respondents

Date of Institution.....30.03.2023
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 this appeal the impugned orders dated 26.11.2013 and 18.02.2021 may very kindly be set aside and the appellant be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be granted in favor of the appellant.”

2. Precise facts as gleaned from the record are that the appellant was enrolled as Cook Constable No. 577 on 25.03.2010. Departmental inquiry was initiated against the appellant on the allegation that he while posted as Police Lines, Bannu absented

himself from government duty w.e.f. 09.01.2013 to 12.09.2013 without any leave or permission from the competent Authority. On conclusion of departmental inquiry, the appellant was awarded major penalty of dismissal from service from the date of his absence i.e 09.01.2013 vide impugned order dated 26.11.2013. The penalty so awarded to the appellant was challenged by him through filing of departmental appeal on 27.05.2019, which was rejected vide impugned order dated 18.02.2021. The appellant has now approached this Tribunal through filing of instant Service appeal on 30.03.2022 for redressal of his grievance.

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 sister of the appellant became ill and there was no one available for her care in the hospital due to which the appellant remained absent from duty. He next argued that the appellant was awarded major punishment of dismissal from service with retrospective effect, therefore, the impugned order dated 26.11.2013 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 has taken the plea of illness of his sister but he has not submitted any documentary evidence in the shape of medical prescriptions regarding illness of his

sister and remained absent from duty without any leave or permission of the competent Authority. He next contended that the departmental appeal as well as service appeal of the appellant are badly barred by time, therefore, the appeal in hand 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 dismissed 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. A perusal of record reveals that the appellant was dismissed from service vide impugned order dated 26.11.2013 on the allegation of absence with effect from the date of his absence i.e 09.01.2013, which was required to have been challenged through filing a departmental appeal within 30 days. The appellant filed departmental appeal after a delay of more than 05 years and 06 months on 27.05.2019, which was rejected vide order dated 18.02.2021. The appellant filed the instant service appeal on 30.03.2023, which too

after a lapse of more than 01 year and 01 months. 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. In view of the above discussion, it is held that as the departmental appeal and service appeal of the appellant are barred by time, therefore, this appeal is 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.*


(MUIHAMMAD 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 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 appeal and service appeal of the appellant are barred by time, therefore, this appeal is 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)
Member (Executive)



(Rashida Bano)
Member (Judicial)