

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 590/2023

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

Maaz Khan S/o Wali Bahadar Khan, R/o Islampur Saidu Sharif, Swat. Ex-Constable No. 264, Police Station Kanju, Swat.

... (Appellant)

VERSUS

1. District Police Officer, Swat.
 2. Regional Police Officer Malakand at Saidu Sharif, Swat.
- (Respondents)

Mr. Arbab Saif-ul-Kamal,
Advocate

For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

For respondents

Date of Institution.....20.03.2023

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 appeal, orders dated 17.10.2017 and 25.05.2022 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 gleaned from the record are that the appellant was enlisted as Constable in Police Department in the year 2009. Departmental inquiry was initiated against the appellant on the allegation that he while posted to JIS Police Lines has absented

himself from lawful duty without prior permission or leave vide DD No. 34 w.e.f. 21.04.2017 for 19 days, DD No. 41 w.e.f. 11.05.2014 for 02 months and 13 days, DD No. 10 w.e.f. 07.07.2017 for 01 months and 10 days and DD No. 50 w.e.f. 18.08.2017 till now. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service from the date of his first absence i.e 21.04.2017 vide impugned order dated 17.10.2017. The appellant filed departmental appeal, which was rejected vide order dated 25.05.2022, hence the appellant filed the instant service appeal on 20.03.2023 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 absence of the appellant was not willful rather the same was due to unavoidable circumstances as well as domestic problems. He next argued that the appellant was awarded punishment of dismissal from service with retrospective effect, therefore, the impugned order dated 17.10.2017 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 a habitual absentee and was remained absent from duty on different occasions, therefore, he was proceeded against departmentally. He next contended that all



the legal and codal formalities were fulfilled before passing the impugned orders, therefore, the appellant was rightly awarded the major punishment of dismissal from service. He further contended that the departmental appeal and service appeal of the appellant are badly time barred, therefore, the appeal in hand is liable to be dismissed on this score alone.

6. We have 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 17.10.2017 on the allegation of absence from duty with effect from the date of his first absence i.e 21.04.2017; which was required to have been challenged through filing a departmental appeal within 30 days but the appellant filed departmental appeal, which bears no dates, however the same was

rejected on 25.05.2022. The appellant was required to have filed service appeal within next 30 days but the appellant filed the instant service on 20.03.2023 after a delay of more than 09 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.*



(MUHAMMAD AKBAR KHAN)
Member (E)

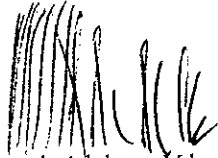


(RASHIDA BANO)
Member (J)

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 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)