

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 177/2018

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

Sabir Shah, Ex-Constable No. 363, Police Station Tariq Abad, Nowshera.
... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. The Regional Police Officer, Mardan.
 3. The District Police Officer, Nowshera.
- (Respondents)

Mr. Taimur Ali Khan,
Advocate --- For appellant

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

Date of Institution.....29.01.2018
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 this appeal, the orders dated 05.01.2018, 13.12.2017 and 05.08.2016 may be set aside and the appellant may be reinstated into service with all back and consequential benefits. Any other remedy which this august Tribunal deems fit and appropriate that, may also, be awarded in favour of appellant.”


2. Precise facts giving rise to filing of the instant appeal are that the appellant joined the Police Department in the year 2011.



Departmental inquiry was initiated against the appellant on the allegations that he while posted at Investigation Wing, Police Station Nizampur was transferred to Police Post Tariq Abad but he failed to report at his new place of posting and thus remained absent from duty without any leave/permission of the competent Authority vide daily diary report No. 21 dated 01.04.2016. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service from the date of his absence vide impugned order dated 05.08.2016. Against the impugned order dated 05.08.2016, the appellant filed departmental appeal on 21.09.2017, which was rejected vide order dated 13.12.2017, there-after the appellant filed revision petition before the Inspector General of Police (copy of which is not available on file), however the same was also filed being badly time barred for about 01 years and 03 months vide impugned order dated 05.01.2018. The appellant has now approached this Tribunal through filing of instant appeal on 29.01.2018 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 became a patient of limber spine due to which was unable to perform his duty and was remained absent from duty. He next argued that the appellant was awarded major punishment of dismissal from service vide impugned order dated 05.08.2016 with retrospective effect, therefore, the impugned order dated 05.08.2016 being void ab-initio is liable to be set-aside. He further argued that as the impugned order



dated 05.08.2016 was passed with retrospective effect, therefore, no limitation would run against the impugned orders. 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 prior permission of the concerned authority, therefore, he was rightly dismissed from service. He next contended that all the legal and codal formalities were fulfilled before passing the impugned order. He further contended that the appellant failed to avail his legal remedy before the departmental as well as before this Tribunal, therefore, the appeal in hand is liable to be dismissed on the ground of limitation.

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 absence i.e 01.04.2016 vide order dated 05.08.2016, which was required to have been challenged through filing of departmental appeal within 30 days but the appellant filed departmental appeal after a lapse of more than 01 years and 04 months on 21.09.2017, which was rejected vide order dated 13.12.2017. Similarly, the appellant was required to have challenged the order dated 13.12.2017 by filing of revision petition within 30 days (copy of the same is not available on record, however the same was dismissed vide order dated 05.01.2018 being badly time barred for about 01 year and 03 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 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)

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.


(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 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)
Member (Executive)


(Rashida Bano)
Member (Judicial)