

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1490/2018

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

Syed Mohsin S/o Syed Muslim Shah, Ex-Lower Division Clerk (BPS-05)
Pakistan Forest Institute.

... (Appellant)

VERSUS

1. Chief Secretary Government of Khyber Pakhtunkhwa Peshawar.
2. Secretary Government of Khyber Pakhtunkhwa Forestry, Environment and Wildlife Department.
3. Director General Forestry, Environment and Wildlife Department, Peshawar.
4. Deputy Director Pakistan Forest Institute, Peshawar.

.... (Respondents)

Miss. Roeeda Khan,
Advocate

For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

For respondents

Date of Institution.....14.12.2018

Date of Hearing29.04.2024

Date of Decision29.04.2024

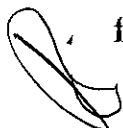
JUDGMENT

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:-


“On acceptance of this appeal the impugned order dated 23.10.2014 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 was appointed as Lower Division Clerk (BPS-05) on 30.11.2006. Departmental inquiry was initiated against the appellant on the allegation of absence from duty since 09.10.2012. On conclusion of the inquiry, the appellant was awarded major penalty of removal from service with effect from the date of his absence from duty i.e 09.10.2012 vide impugned order dated 23.10.2014. The appellant preferred departmental appeal against the impugned order dated 23.10.2014 on 16.03.2016, which was not responded, hence the appellant has now filed the instant service appeal on 14.12.2018 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 was granted leave from 11.06.2012 to 23.08.2012 (74 days) on half average pay and 24.08.2012 to 08.10.2012 (46 days) without pay, however, after expiry of the leave, the appellant could not attend the duty due to his illness. He next argued that after recovery from illness, when the appellant approached the department for joining his duty, he came to know that he has been removed from service. He further argued that the appellant was awarded major punishment of removal from service vide impugned order dated 23.10.2014 with retrospective effect, therefore, the impugned order dated 23.10.2014 being void ab-initio is liable to be set-aside. He also argued that as the impugned order dated 23.10.2014 was passed with retrospective

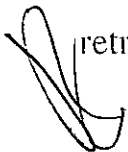


effect, therefore, no limitation would run against the impugned order. In the last, he requested that the impugned order may be set-aside and the appellant may be reinstated in service with all back benefits.

5. On the other hand, learned Deputy District Attorney for the respondents has contended that vide order dated 08.06.2012, the appellant was granted leave with effect from 11.06.2012 to 08.10.2012, therefore, the appellant was required to join his duty on 09.06.2012 but he failed to join his duty and remained absent from duty. He next contended that all the legal and codal formalities were fulfilled before passing the impugned order, therefore, he has rightly been awarded major penalty of removal from service. He further 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 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. Perusal of record reveals that appellant was removed from service from the date of absence i.e 09.10.2012 vide order dated 23.10.2014, which was required to have been challenged through filing of departmental appeal within 30 days but appellant filed departmental appeal on 16.03.2016 i.e after a delay of more than 01 years and 04 months, which is badly barred by time. 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 29th day of April, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

Naeem Amin

22.04.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney 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)

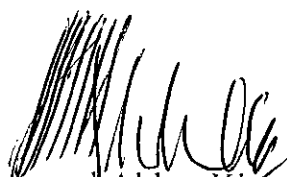
Kaleemullah
ORDER

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 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 29th day of April, 2024.*


(Muhammad Akbar Khan)
Member (Executive)


(Rashida Bano)
Member (Judicial)