

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

**Service Appeal No. 749/2018**

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

Sawab Khan S/o Faqir Khan (Ex-PST), R/o Kalpanai, P.O & Tehsil Daggar,  
District Buner.

... (Appellant)

**VERSUS**

1. The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The District Education Officer (Male), District Buner.

.... (Respondents)

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Mr. Noor Muhammad Khattak,  
Advocate

--- For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

--- For respondents

Date of Institution.....29.05.2018

Date of Hearing .....29.04.2024

Date of Decision .....29.04.2024

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**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 order dated 14.11.2012 may very kindly  
be set aside and the appellant may kindly be  
re-instated into service with all back benefits. Any  
other remedy which this august Tribunal deems fit  
that may also be awarded in favour of the  
appellant.”**


2. Precise facts forming the background of the instant appeal are  
that the appellant while serving as Primary School Teacher (BPS-07)



in Government Primary School Chanar No. 1, was proceeded against departmentally on the allegations of absence from duty with effect from 29.08.2012. On conclusion of the inquiry, the appellant was imposed major penalty of removal from service with effect from 30.08.2012 vide impugned order dated 14.11.2012. The penalty so awarded to the appellant, was challenged by him through filing of departmental appeal on 30.01.2018, which was not responded. The appellant has now approached this Tribunal through filing of instant service appeal on 29.05.2018 for redressal of his grievances.

3. Respondents were put on notice who submitted their written reply on the appeal.

4. Learned counsel for the appellant has argued that due to some domestic problems, the appellant was granted 730 days leave without pay vide order dated 30.01.2008, 365 days leave without pay vide order dated 02.12.2009 and 366 day extra-ordinary leave vide order dated 10.01.2011. He next contended that lastly, 180 days extra-ordinary leave of the appellant was extended vide order dated 31.12.2011 and on expiry of the said leave, the appellant submitted application for further extension of leave but no reply was received regarding acceptance or rejection of the application. He next argued that the appellant was awarded major punishment of removal from service vide impugned order dated 14.11.2012 with retrospective effect, therefore, the impugned order dated 14.11.2012 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 14.11.2012 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 the appellant was granted 730, 365, 366 and 180 days leaves on difference occasion, however after expiry of the leave the appellant failed to join the duty, therefore, disciplinary proceedings were initiated against him. He next contended that 03 notices were issued to the appellant but he did not reply the same, therefore, inquiry was also conducted in the matter. He further contended that all the legal and codal formalities were fulfilled before passing the impugned order. He also contended that the impugned order of removal from service of the appellant was passed on 14.11.2012, however the appellant has filed the instant appeal on 30.01.2018, which is 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 with effect from 30.08.2012 vide order dated 14.11.2012, which required to have been challenged through filing of departmental appeal within 30 days but appellant filed departmental appeal on 30.01.2018 i.e after a delay of more than 05 years and 02 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 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 29<sup>th</sup> 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 alongwith Iftikhar Ul Ghanni, DEO Buner 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)

**ORDER**

29<sup>th</sup> April 2024  
Kalāemullah

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 29<sup>th</sup> day of April, 2024.*



(Muhammad Akbar Khan)  
Member (Executive)



(Rashida Bano)  
Member (Judicial)