

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1105/2016

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

Asmat Ullah Khan S/o Amir Shah, R/o Tajazai, Ex-Constable No. 757, PS Ghazni Khel, Lakki Marwat.

... (Appellant)

VERSUS

1. District Police Officer, Bannu.
 2. Regional Police Officer, Bannu Region, Bannu.
 3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- (Respondents)

Mr. Arbab Saif-ul-Kamal,
Advocate

For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

For respondents

Date of Institution.....14.10.2016
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 the appeal, orders dated 07.07.2010, 09.08.2011 and 15.09.2016 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 averments as raised by the appellant in his appeal are that, he was appointed as Constable on 27.07.2007 in Police Department and vide order dated 28.08.2009, he was transferred from

District Lakki to District Bannu. Departmental proceedings were initiated against the appellant on the allegation that he while transferred from Lakki District to District Police Bannu vide RPO/Bannu Region Bannu order Endst: No. 3537-38 dated 28.08.2009 failed to make arrival on his place of posting and absented himself from government duty with effect from 03.09.2009 to 21.10.2009 and from 22.10.2009 to 07.11.2009. On conclusion of the inquiry, the appellant was removed from service vide impugned order dated 07.07.2010 passed by District Police Officer, Bannu. The appellant challenged the order dated 07.07.2010 through filing of representation, however, the same was rejected vide impugned order dated 09.08.2010. The appellant then preferred mercy petition, which was also rejected on the ground of limitation and merits vide impugned order dated 15.09.2016. The appellant has now approached this Tribunal through filing of instant service appeal on 14.10.2016 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 absence of the appellant from duty was not willful rather the same was due to illness of his mother. He next argued that the appellant was awarded major punishment of removal from service vide impugned order dated 07.07.2010 with retrospective effect, therefore, the impugned order dated 07.07.2010 being void ab-initio is liable to be set-aside. He further argued that as the impugned order dated 07.07.2010 was passed with retrospective effect, therefore, no limitation would run

against the impugned order. He next argued that the appellant was basic employee of District Police Lakki Marwat and was transferred to District Bannu, therefore, if there was any misshape happened, then the District Police Officer, Bannu, was required to inform the District Police Officer, Lakki Marwat about any action, however the same has not been done, therefore, on his score alone, the impugned orders are illegal and void ab-initio. He next argued that neither any charge sheet/statement of allegations or show-cause notice was issued to the appellant nor any inquiry was conducted in the mater, therefore, he was condemned unheard. 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 remained absent from duty without seeking any leave or permission from the competent Authority. He next contended that the appellant was issued charge sheet alongwith statement of allegations and was also conducted inquiry in the matter. He further contended that the appellant failed to join the inquiry proceedings, therefore, ex-parte proceedings were conducted against the appellant. He also contended that the departmental appeal as well as mercy petition filed by the appellant are badly barred by time, therefore, the appeal in hand is not maintainable and 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 competent authority vide which the appellant has been awarded penalty with retrospective effect is void ab-initio and no limitation would run against the same. In our humble view this contention 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. Record reveals that appellant was removed from service vide order dated 07.07.2010, which was required to have been challenged through filing of departmental appeal within 15 days as prescribed in Section-9 of Removal from Service (Special Powers) Ordinance, 2000 but appellant filed departmental appeal after lapse of that 15 days that is why same was rejected/filed by the authority i.e Regional Police Officer, Bannu Region, Bannu being a time barred one vide order dated 09.08.2011. Appellant also approached CPO, who also filed his appeal/revision vide memo No. 790/Legal dated 28.02.2012. 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. Although appellant filed second appeal/mercy petition to

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, which was rejected vide order dated 15.09.2016 on the grounds of limitation and merit as well but same is of no help to him for condonation of delay as in the law/rules there is no provision of mercy petition/second appeal/revision. Appellant filed instant appeal on 14.10.2016, which he was required to file within 30 days of passing of adverse order against him, however he filed the instant appeal after a lapse of 05 years of passing of appellate order dated 09.08.2011.

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 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 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. 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.

RECORDED
IN
PESHAWAR


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

Kaleemullah

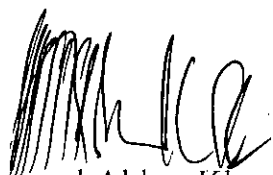
ORDER


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)

10th Nov, 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 22.02.2024 before D.B. P.P given to the parties.



(Muhammad Akbar Khan)
Member (E)



(Rashida Bano)
Member (J)

SCANNED
RABT
Peshawar
kamranullah

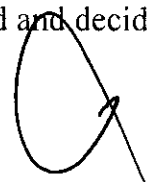
22nd Feb, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. These cases involve question of grant of retrospective effect to the impugned orders. Most of these cases are pending since 2018, therefore, the learned counsel were requested to give a date of their own choice, so that a last chance be given to all of the parties and their counsel to argue these appeals on the said date of their choice. The learned counsel, after consultation with each other, agreed that matters may be fixed for 22.04.2024. Adjourned accordingly to the above date, the date is given on their own choice with the observation that no further adjournment will be granted on any ground and in case any of the learned counsel could not argue, the other counsel would argue and the cases would be decided forthwith. And in case again further adjournment is sought, all the matters shall be deemed to have been adjourned sine-die. In that eventuality, the counsel or parties whenever desirous to argue may make an application for restoration of the appeals to get those argued and decided. P.P given to the parties.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

Adnan Shah