

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

**Service Appeal No. 685/2018**

**BEFORE: MRS. RASHIDA BANO ... MEMBER (J)**  
**MR. AURANGZEB KHATTAK ... MEMBER (J)**

Ex-Cook Constable Samin Gul No. 701, R/o District Kohat.  
... (Appellant)

**VERSUS**

1. Inspector General of Khyber Pakhtunkhwa Police Peshawar.
  2. Deputy Inspector General of Police Kohat Region Kohat.
  3. District Police Officer Kohat.
- .... (Respondents)

Miss. Roeeda Khan,  
Advocate --- For appellant

Mr. Muhammad Jan,  
District Attorney --- For respondents

Date of Institution.....27.04.2018

Date of Hearing .....05.08.2024

Date of Decision .....05.08.2024

**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:-

**“by accepting the instant appeal the impugned order of respondents may be set-aside and the present appellant may please be re-instated in the service with all back benefits or blessed with any other remedy as the honorable Tribunal deem proper.”**


2. Precise facts giving rise to filing of the instant appeal are that the departmental proceedings were initiated against the appellant on the allegation of his involvement in a criminal case vide FIR No. 396 dated 22-06-2013 registered under Sections 3/4 P.O., 9C-CNSA 13.A.O., P.S. Jungle Khel Kohat. On conclusion of the departmental proceedings, the



appellant was removed from service vide order dated 15-01-2014 (OB-69) with effect from 22-06-2013, which was challenged by the appellant through filing of departmental appeal on 09-02-2014, however the same was rejected vide order No. 2437-38/EC dated 07-03-2014. The appellant filed representation before the Provincial Police Officer on 01-02-2018, however the same was also rejected vide order dated 05-04-2018. The appellant has now approached this Tribunal through filing of instant service appeal for redressal of his grievance.

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

4. Learned counsel for the appellant has argued that the departmental inquiry was not conducted in accordance with law/rules as the inquiry officer neither heard the appellant personally nor examined any supporting witnesses. He next argued that the appellant has already been acquitted in the concerned criminal case, therefore, the very charges on the basis of which the appellant was proceeded against, has been vanished away. He further argued that allegations against the appellant were acted upon without granting him an opportunity for a fair hearing. The appellant was dismissed without being properly served with charge sheets or given a chance to defend himself. He also argued that the appellant was not given copies of inquiry findings or asked for written replies appropriately, therefore, the departmental proceedings were arbitrary, biased, and conducted without any substantial evidence. He next contended that departmental appeal of the appellant was rejected on 07-03-2014, however later on Rule 11-A was introduced in the Police



Rules through notification dated 27-08-2014, therefore, the appellant subsequently filed a revision petition to the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar, which was rejected on 04-04-2018, hence the appeal in hand is within the permissible time frame. He further contended that the impugned order dated 15-01-2014 was passed with retrospective effect, therefore, the same is void ab-initio, hence no limitation runs against the impugned orders.

5. Conversely, learned District Attorney for the respondents contended that the disciplinary actions were taken in full compliance with departmental rules and regulations and the appellant was found guilty based on the evidence available during the departmental inquiry. He next contended that departmental proceedings are different from criminal proceedings, therefore, mere acquittal of the appellant in the criminal case could not be considered as ground for his exoneration in the departmental proceedings. He further contended that the appeal of the appellant is badly time barred, therefore, the same 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. The appellant, a former Cook Constable Belt No-701, was subjected to departmental proceedings on allegations of his involvement in a criminal case, as evidenced by FIR No. 396 dated 22-06-2013, registered under Sections 3/4 P.O., 9C-CNSA 13.A.O., P.S. Jungle Khel, Kohat. Consequently, after the conclusion of the departmental

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proceedings, the appellant was dismissed from service by the District Police Officer, Kohat, through an order dated 15-01-2014. The appellant challenged the dismissal order dated 15-01-2014 by filing departmental appeal to the Deputy Inspector General of Police (DIG) Kohat Region, Kohat on 09-02-2014, which was rejected vide order dated 05-03-2014, a copy of which was sent to the appellant with an endorsement No. 2437-38/EC dated 07-03-2014. According to Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appellant was required to have filed service appeal against the said order within 30 days before this Tribunal. However, the appellant instituted his service appeal on 27-04-2018 before this Tribunal, resulting in a significant delay of four years, one month, and 20 days. In alignment with the judgment of the August Supreme Court of Pakistan in 2011 SCMR 08, the question of limitation is pivotal and substantially influences the merits of the case. The delay in filing the appeal does not meet the legal requirements for condonation and lacks sufficient justification.

8. According to the Appeal Rules, 1986, any appeal must be filed within one month of the initial rejection but the appeal in hand was not filed within the one-month limitation period as required by the Appeal Rules, 1986. As regard the contention of learned counsel for the appellant that the appellant filed revision petition to the Provincial Police Officer Khyber Pakhtunkhwa, Peshawar which was rejected vide order dated 04-04-2018, therefore, service appeal is within time. However, Rule 11-A, introduced on 27-08-2014, does not have retrospective applicability. Therefore, it cannot impact the timing or validity of the appellant's original rejection which occurred on 07-03-2014, prior to the



rule's existence. The rejection of the appellant's revision petition on 04-04-2018 is considered separate and does not extend the original appeal period as defined by the Appeal Rules, 1986. The appellant's departmental appeal rejection occurred prior to the implementation of Rule 11-A, which does not influence the time constraints applied to this case. The rejection of the departmental appeal on 07-03-2014 stands, and the appellate process under the subsequently added Rule 11-A is inapplicable to this case.

9. In a recent judgment, the Supreme Court of Pakistan addressed the argument related to the necessity of challenging void orders within the statutory period of limitation. The court reaffirmed its stance in the case reported as 2023 SCMR 866, where it was presented with the contention that no period of limitation should apply to void orders. Relevant para of 2023 SCMR 866 is reproduced as under:-

*“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) ”

The judgment encapsulated the principle by clearly stating that an aggrieved party cannot disregard the prescribed limitation period under the pretext that the order in question is void. It was incumbent upon the appellant to seek redressal within the legally defined timeframe. Failure to comply with this requirement not only disregards established legal practice but also undermines the procedural integrity of judicial processes. Therefore, the Supreme Court's ruling in this context extends and affirms the tradition of its precedents, embedding the necessity to observe limitation statutes as an integral part of seeking judicial redress, irrespective of the perceived void status of an order. This consistent application serves to maintain legal uniformity and predictability in judicial proceedings, ensuring equitable and timely justice.

10. The delay in seeking remedy is not just an issue of timing but raises concerns about the diligence of the appellant in protecting his rights. **Supreme Court of Pakistan in its a recent judgment delivered on 19.07.2024 in Civil Petition No. 516-K of 2022**, has held that the principle of "delay or laches" as established in legal precedent underscores that a party who delays in asserting their rights may be barred from obtaining relief from the Court. This principle is built upon the maxim "Vigilantibus non dormientibus jura subveniunt," which translates to "the law aids those who are vigilant but not those who are sleeping over their rights." This maxim emphasizes the necessity of vigilance and prompt action in legal matters. Moreover, Section 3 of the Limitation Act, 1908 states that it is the inherent duty of the Court to

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examine and determine issues of limitation, regardless of whether such a defense is raised by the respondent. The Tribunal finds that the appellant has not acted with the requisite vigilance expected in the pursuit of his legal rights.

11. Consequently, the appeal in hand stands dismissed being badly barred by time. 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 05<sup>th</sup> day of August, 2024.*



**(AURANGZEB KHATTAK)**  
Member (J)




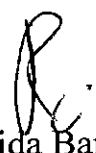
**(RASHIDA BANO)**  
Member (J)

**ORDER**

05<sup>th</sup> August, 2024

1. Appellant alongwith his counsel present. Mr. Muhammad Usman, DSP (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand stands dismissed being badly barred by time. 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 05<sup>th</sup> day of August, 2024.*

  
(Aurangzeb Khattak)  
Member (Judicial)

  
(Rashida Bano)  
Member (Judicial)