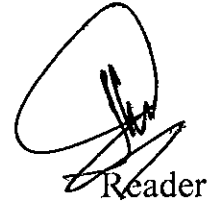


08.02.2024


Tour to Camp Court Swat has been cancelled, therefore to come up for the same as before on 09.05.2024.



Reader

09.05.2024 01. Appellant present in person. Mr. Umair Azam, Addl. AG alongwith Hazrat Hussain, Inspector (Legal) for the respondents present.

02. On 15.09.2023, last chance was given for arguments. Former stated that learned counsel for the appellant is not in attendance due to general strike of the lawyers. Adjourned. To come up for arguments on 05.06.2024 before the D.B at camp court, Swat. PP given to the parties.

SCANNED
KFCS
Peshawar


(Fareeha Paul)
Member(E)
Camp Court, Swat.


(Rashida Bano)
Member(E)
Camp Court Swat

Fazle Subhan, P.S.


ORDER


05.06.2024 1. Learned counsel for the appellant present. Mr. Muhammad

Jan learned District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, it is held that as the departmental appeal of the appellant was barred by time, therefore, the instant service appeal is 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 Camp Court, Swat and given under our hands and seal of the Tribunal this 05th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, Swat



(RASHIDA BANO)
Member (J)
Camp Court, Swat


9. Appellant filed departmental appeal on 02.01.2009 which was not decided within statutory period of 90 days . Then in such a situation appellant was required to file service appeal within 30 days after expiry of statutory period of 90 days be filed instant service appeal on 28.04.2022 with an unexplained delay of more than 13 years, 3 months and 26 days which is hopelessly barred by time. Departmental appeal was dismissed on the ground of limitation. 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 the service appeal of the appellant is barred by time, hence, dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

12. *Pronounced in open court at Camp Court, Swat and given under our hands and seal of the Tribunal this 5th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court, Swat



(RASHIDA BANO)
Member(J)
Camp Court, Swat

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)”



in the matter but the appellants failed to turn up for duty. He further contended that the appellant was failed to appear before the inquiry officer despite being summoned. He also contended that no departmental appeal was filed by the appellant, therefore, the appeal in hand is not maintainable.

6. Perusal of record reveals that appellant was enlisted in respondent-department as Constable in the year 2007. That law and order situation arose in Swat Valley due to militancy. Almost all the employees of all the departments let their stations of duty, especially of the Police Department. Appellant is also one of them who absented himself from his duty place without obtaining any prior approval by submitting any leave application. Respondent-department proceeded against the appellant by issuing charge sheet and statement of allegations but appellant did not join the inquiry proceedings and was discharged from service vide order dated 05.12.2008 from the date of his absence i.e 16.08.2008.

7. The first legal question is to decide that whether appellant is similarly placed person with those who were reinstated into service by department and this Tribunal or otherwise? In our humble view the nature of absence from duty of every Police Official is different from each other with respect to period of willful absence from duty from their respective place of duty, where they were deputed and nature of duty assigned. Cases of those who remained willfully absent for few days will have to be looked differently from the one who remained absent for the years. Therefore, each and every case will have to be seen on its own merit. Learned counsel for the appellant argued that impugned orders were issued with retrospective effect and are void orders. Secondly, whether impugned order passed by the competent authority vide which the appellant has been discharged from service with retrospective effect is void ab-initio and no




impugned order dated 05.12.2008. The appellant filed departmental appeal on 02.01.2009, which was not responded, hence the instant service appeal.

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

4. Learned counsel for the appellant has argued that the absence of the appellant was not willful rather the same was due to militancy in the Swat Valley. He next argued that the appellant was discharged from service from the date of his absence with retrospective effect, therefore, the impugned orders being void ab-initio is liable to be set-aside. He further argued that as the impugned order was passed with retrospective effect, therefore, no limitation would run against the impugned order. He next contended that the appellant was discharged from service without observing codal formalities enumerated in the rules. He further contended that similarly placed officials of Police Department, who were removed/dismissed/discharged from service, were reinstated by the department as well as by this Tribunal, therefore, the appellant is also entitle for similar treatment. 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 District Attorney for the respondents has contended that the appellant was posted for emergency duty at District Swat but they showed extreme cowardice and intentionally/deliberately absented himself from duty till the of date of his discharged from service, therefore, they were rightly discharged from service. He next contended that appellant was issued charge sheet alongwith statement of allegations and was also conducted inquiry



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP
COURT SWAT
Service Appeal No. 790/2022

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

**Umar Zeb S/o Sher Malook, R/o Kokarai, Swat Ex-Constable No. 1637,
Police Line, Swat.**

... (Appellant)

VERSUS

1. The Regional Police Officer, Malakand, At Saidu Sharif, Swat'
2. District Police Officer, Swat.

... (Respondents)

Arbab Saif ul Kamal
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....28.04.2022
Date of Hearing.....05.06.2024
Date of Decision.....05.06.2024

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“That on acceptance of this appeal, the orders dated 21.08.2010 and 23.07.2010 may be set aside and the appellant may be reinstated with all back and consequential benefits. Any other Remedy which this Tribunal deems fit and appropriate that may also be awarded in favor of appellant.”

2. Precise facts giving rise to filing of the instant appeal are that the appellant was enlisted as Constable in Police Department in the year 2007. Departmental action were taken against the appellant on the allegations of absence of lawful duty with effect from 16.08.2008. On conclusion of the inquiry, the appellant was discharged from service from the date of his absence i.e 16.08.2008 vide

