


ORDER

06.06.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, it is held that as the departmental appeal and service appeal of the appellant are barred by time, therefore, this 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 in Peshawar and given under our hands and seal of the Tribunal this 6th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

limitation cannot be considered a technicality simpliciter as it has bearing on merit of the case.

9. 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.

10. In view of the above discussion, it is held that as the departmental appeal and service appeal of the appellant are barred by time, therefore, this appeal is dismissed being not competent. Parties are left to bear their own costs. File be consigned to the record room.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 6th day of June, 2024.*


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Member (J)

7. 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)”

8. A perusal of record reveals that the appellant was removed from service vide impugned order dated 30.05.2009 on the allegation of absence with effect from the date of his absence i.e 05.05.2009, which was required to have been challenged through filing a departmental appeal within 15 days as prescribed under Removal from Service (Special Powers) Ordinance, 2000, however the appellant filed departmental appeal in the year 2013, which was rejected being time barred. The appellant filed the instant service appeal on 03.09.2019, which seems badly barred by time. August Supreme Court of Pakistan in

 its judgment reported as 2011 SCMR 08 has held that question of

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 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).”



2. Precise facts as gleaned from the record are that the appellant was enlisted as Constable in Police Department. Departmental proceedings were initiated against the appellant on the allegation that he while posted Gard Amnowar, deliberately absented himself with effect from 05.05.2009. On conclusion of the inquiry, the appellant was awarded major penalty of removal from service from the date of his absence i.e 05.05.2009 vide impugned order dated 30.05.2009. The penalty so awarded to the appellant, was challenged by him through filing of departmental appeal (copy not attached), which was rejected vide order dated 26.04.2013 being time barred. The appellant filed the instant service appeal on 03.07.2019 for redressal of his grievance.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

6. The first legal question is to decide that whether appellants are 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



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP
COURT SWAT**

Service Appeal No. 912/2019

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

Israel shah Ex-Constable No. 548 district Buner. ... (Appellant)

VERSUS

1. The Regional Police Officer, Malakand, At Saidu Sharif Swat
2. District Police officer Buner. ... (Respondents)

Uzma Syed
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

**Date of Institution.....03.07.2019
Date of Hearing.....06.06.2024
Date of Decision.....06.06.2024**

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 02.05.2019 and 30.05.2019 may be set aside and the appellant may be reinstated with all back and consequential benefits. Any other Remedy which this august Tribunal deems fit and appropriate that may also

be awarded in favor of appellant .”

