


ORDER

05.06.2024 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 5th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

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 5th day of June, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

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 20.06.2011 on the allegation of absence with effect from the date of his absence i.e 01.09.2009, 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 on 26.07.2011, which was not responded. The appellant filed the instant service appeal on 19.09.2019, which seems badly barred by time. August Supreme Court of Pakistan in its judgment reported as 2011 SCMR 08 has held that question of 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

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).”

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


inquiry, the appellant was awarded major penalty of removal from service from the date of his absence i.e 01.09.2009 vide impugned order dated 20.06.2011. The penalty so awarded to the appellant, was challenged by him through filing of departmental appeal, which was not responded, hence the appellant filed the instant service appeal on 19.09.2019 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 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



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1216/2019

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

Sher Wali Khan S/o Habib Ullah Jan, R/o Doro, Upper Dir, Ex-Constable No. 319, Police Station Gandigar Upper Dir. ... (Appellant)

VERSUS

1. District Police Officer, Upper Dir.
2. Deputy Inspector of Police, Malakand Region, at Mingora, Swat.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar. (Respondents)

Mr. Arbab Saif-ul-Kamal
Advocate

--- For appellant

Mr. Muhammad Jan
District Attorney

--- For respondents

Date of Institution.....19.09.2019

Date of Hearing05.06.2024

Date of Decision05.06.2024

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 appeal, order dated 20.06.2011 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 facts as gleaned from the record are that the appellant was enlisted as Constable in Police Department in the year 2003. Departmental proceedings were initiated against the appellant on the allegation that he while posted in Police Station Gadigar, deliberately absented himself with effect from 01.09.2009. On conclusion of the