

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR,
AT CAMP COURT SWAT.

Service Appeal No. 751/2021

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

Hazrat Shoaib S/O Ameer, R/o Kalam, Gabral, Ex-Constable No. 46, Office
of FRP Swat.

... (Appellant)

VERSUS

1. Superintendent of Police, FRP, Malakand Range, Swat.
 2. Commandant, FRP, Khyber Pakhtunkhwa, Peshawar.
 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.....03.01.2020
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 10.10.2008, 03.01.2011 and 10/26.02.2016 of the respondents be set-aside and appellant be reinstated in service with all consequential/back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

2. Through this single judgment we intend to dispose of instant service appeal as well as connected service appeals (1) Service Appeal No. 752/2020 titled “Muhammad Hayat Vs. Police Department” (2) Service Appeal No. 753/2020 titled “Sajjad Ali Vs. Police Department” (3) Service




Appeal No. 754/2020 titled "Fazle Subhan Vs. Police Department" as in all these appeals common questions of law and facts are involved.

3. Precise facts giving rise to filing of the instant appeals are that the appellants were enlisted as Constable in Police Department on 2007 (on different dates mentioned in their respective appeal). Departmental action was taken against the appellants on the allegations of absence of lawful duty with effect from 08.03.2008 (on different dates mentioned in their respective appeal). On conclusion of the inquiry, the appellants were discharged from service from the date of his absence i.e 08.03.2008 (on different dates mentioned in their respective appeal) vide impugned order dated 10.10.2008. The appellants filed departmental appeal, which was rejected vide order dated 03.01.2011, there-after the appellants filed review petition, however the same was also rejected being badly time barred vide order dated 10.02.2016. The appellants have now approached this Tribunal through filing of instant service appeal on 03.01.2020 for redressal of his grievances.

4. Respondents were put on notice who submitted their reply on the appeal. We heard the learned counsel for the appellants as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

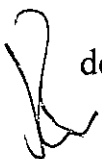
5. Learned counsel for the appellants have argued that the absence of the appellants were not willful rather the same was due to militancy in the Swat Valley. He next argued that the appellants were discharged from service with retrospective effect, therefore, the impugned order being void ab-initio 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 appellants were 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 appellants are also entitle for similar treatment. In the last, he requested that the impugned orders may be set-aside and the appellants may be reinstated in service with all back benefits.


6. On the other hand, learned District Attorneyfor the respondents has contended that the appellant was posted for emergency duty with Platoon No. 81 at Shangla but he showed extreme cowardice and intentionally/deliberately absented himself from duty, therefore, he was rightly discharged from service. He next contended that appellant was issued charge sheet alongwith statement of allegations and was also conducted inquiry in the matter but the appellant failed to turn up for duty. He further contended that the appellant was also failed to appear before the inquiry officer despite being summoned. He also contended that the departmental appeal as well as service appeal of the appellant are badly time barred, therefore, the appeal in hand is liable to be dismissed on this score alone.

7. A perusal of the record reveals that appellant was enlisted in respondent-department in the year 2007. That law and order situations arise in Swat Valley due to militancy. Almost all the employees of all the department left their services, especially of the Police Department.



Appellant is also one of them who absented himself from his duty place without obtaining any prior approval of submitting of any leave application. Respondent-department proceeded against the appellant by issuing charge sheet and statement of allegations but appellant had not joined the inquiry proceedings and was discharged from service vide order dated 10.10.2008 from the date of his absence i.e 08.03.2008.

8. We will have to decide first that whether appellant is similarly placed person with those who were reinstated into service by department and this Tribunal or not? Similarly placed means having the corresponding sides parallel and directed in same sense. In our humble view in the case of absence from duty of every Police Official is different from each other with respect to period of willful absence from duty of their place of duty area where they were deputed and nature of duty assigned. Case of official who remain willful absent for few days will have to be looked differently from the one who remain absent for the years. Therefore, each and every case will have to be seen on its own merit. Learned counsel for the appellant also argued that impugned orders were issued with retrospective effect and are void orders. Secondly, we will have to decide that 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).”

9. 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)”

10. Appellant filed departmental appeal which was dismissed on

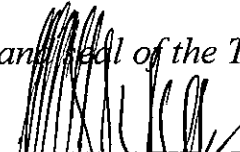
03.01.2011 which under law required to have been challenged within 30


days, but the instant service appeal was filed 03.01.2020, with a considerable delay of 10 years, which is hopelessly barred by time. Although appellant filed second departmental appeal, which was also rejected on 18.02.2016 from which too instant service appeal was barred by 5 years. 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.

11. 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.

12. Consequently, it is held that departmental appeal of the appellants were barred by time, therefore, instant service appeal as well as connected service appeals are barred by time, hence, dismissed being not competent. Parties are left to bear their own costs. Consign.

13. *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

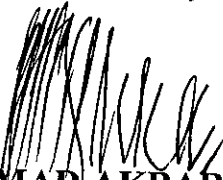

(RASHIDA BANO)
Member(J)
Camp Court, Swat


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