

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.116/2019

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Ghaffar S/o Gul Aziz, Ex-Constable No.606, District Police Swat.

... (Appellant)

VERSUS

1. District Police Officer, Swat.
 2. Regional Police Officer, Malakand at Saidu Sharif, Swat
 3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
- ... (Respondents)**

Mr. Fazal Shah Momand
Advocate ... For Appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For Respondents

Date of Institution.....11.01.2019
Date of Hearing.....13.06.2024
Date of Decision.....13.06.2024

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:

“On acceptance of this appeal the impugned orders dated 27.01.2020 of respondent No.1 and order dated 18.06.2011 of respondent No.2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.”

2. Brief facts of the case are that appellant joined the Police Department as Constable on 01.01.1991 and since his appointment he was performing his duty upto the entire satisfaction of his superiors. In the year 2007, when militancy was at peak in Swat, the appellant was threatened by terrorists to vacate his house for their commander. That on 28.12.2007, the appellant alongwith others while on duty was targeted by the terrorists and got seriously injured to which effect FIR No. 1487 was registered at P.S Mingora. He was again threatened whereafter he requested respondents for three years Ex-Pakistan Leave i.e till 22.04.2011 which was granted vide notification dated 14.04.2008. He after availing leave when came his village, he was consistently threatened, thus he was unable to perform his duty and was dismissed from service vide order dated 18.06.2011. Against which appellant filed departmental appeal, which was filed vide order dated 27.10.2020 (during pendency of appeal), hence the instant service appeal.

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 Deputy 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 Deputy District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was appointed as Constable in respondent department. The appellant was threatened by the local commander

of terrorists to vacate his house for their commander namely Abdur Rehman in the year 2007 when the militancy in Swat was at its peak. The appellant alongwith others while on duty was targeted by the terrorists on 28.12.2007 and got seriously injured to which effect FIR No.1487 was registered at Police Station Mingora. The appellant was again threatened where after he requested respondents for three years ex-Pakistan leave i.e. till 22.04.2011 which was accordingly granted vide notification dated 14.04.2008.

7. Appellant when after his three years leave had not joined his duties, respondents started disciplinary proceedings against him by issuing charge sheet and statement of allegations. Appellant also had not joined inquiry proceedings and was dismissed from service vide order dated 18.06.2011 by respondent No.2. Appellant filed departmental appeal before respondent No.1 on 28.06.2018, which under the rules required to have been challenged within 30 days but same was filed with considerable delay of 7 years and 10 days which was hopelessly 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.

8. Under the law 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

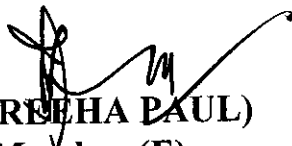


must approach the competent forum for redressal of his grievance within the period of limitation provided by law. This principle has consistently been upheld, affirmed and reaffirmed by this Court and is now a settled law on the subject. Reference in this regard may be made to Parvez Musharraf v. Nadeem 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)”

9. It is well settled that law favors 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. Consequently, it is held that as the departmental appeal as well as service appeal of the appellant was barred by time, therefore, the appeal in hand stands dismiss being not competent. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of June, 2024.*


(FARZEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER

13.06.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Ali Rehman, DSP for the respondents present.
2. Vide our detailed judgment of today placed on file, it is held that as the departmental appeal as well as service appeal of the appellant was barred by time, therefore, the appeal in hand stands dismiss being not competent. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of June, 2024.*


(FAREEH PAUL)
Member (E)


(RASHIDA BANO)
Member (J)