

S.A #.5799/2021

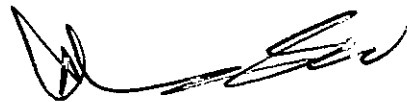
ORDER

9th Sep. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present. Private respondents present through counsel. Heard.
2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 9th day of September, 2024.*



(Rashida Bano)
Member (J)



(Kalim Arshad Khan)
Chairman

Mutazem Shah

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)."

8. In view of the above, instant service appeal is dismissed with costs.

9. We have been informed that de-novo inquiry has ordered by the Commissioner and by the Hon'ble Peshawar High Court was not yet finalized nor any order was passed thereon, therefore, in the interest of justice, we leave the appellant at liberty to challenge the order, if any, made after the inquiry but in accordance with law.
Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 9th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah

why the appeal was not immediately filed after his release and despite the fact that it was already barred by time the petitioner consumed approximately another two weeks to file an appeal and that too without an application for condonation of delay explaining the reason for every day of delay as required under the law.

5. The learned ASC has also admitted that the appeal of the petitioner before the Tribunal was barred by time. He has however argued that he was pursuing a remedy before the High Court under the bona fide belief that he was before a right forum. In order to avail the benefit of section 14 of the Limitation Act, 1908 it is imperative that a litigant seeking benefit of the said provision must show that he was prosecuting his remedy with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. The material words are, "due diligence and good faith" in prosecuting a remedy before a wrong forum. The term "due diligence" entails that a person takes such care as a reasonable person would take in deciding on a forum to approach. The learned ASC has attempted to argue that the law was unclear and there was ambiguity regarding the forum which the employees of Frontier Corps could approach for redressal of their grievances and that such confusion was ultimately resolved by this Court through a judgment reported as IG, HQ Frontier Corps v. Ghulam Hussain (2004 SCMR 1397) in which it was held that employees of the Frontier Corps shall be governed under the provisions of Frontier Corps Ordinance, 1959 and for the limited purpose would enjoy the status of civil servants. As such, they could avail their remedies before the Tribunal for redressal of their grievances. The argument of the learned ASC for the petitioner is fallacious. This Court had as far back as 2004 clarified the law on the subject and held that employees of Frontier Corps will be deemed to be civil servants for the purpose of approaching the Tribunal for redressal of their grievances. Reference in this regard may be made to IG, HO Frontier Corps v. Ghulam Hussain (2004 SCMR 1397). The subsequent judgment reported as Commandant, Frontier Constabulary v. Gul Raqib Khan (2018 SCMR 903) merely reaffirmed the earlier judgment. In view of the fact that there was no confusion or ambiguity in the law, the argument of learned ASC that the petitioner was bona fide availing a remedy with due diligence before a wrong forum and should therefore be granted the benefit of Section 14 of the Limitation Act holds no water.

6. Adverting to the argument 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

the learned District Attorney, assisted by the learned counsel for private respondents, controverted the same by supporting the impugned order.

5. Perusal of record shows that the appellant was out of service when the impugned promotion order dated 29.06.2020 was issued. He was reinstated into service vide order dated 26.08.2020, which though is objected upon by the respondents, yet that is admittedly still in the field.

6. Be that as it may, the appellant was reinstated vide order dated 26.08.2020, while he filed departmental appeal on 15.02.2021 against the promotion order of private respondents dated 29.06.2020 which is barred by time.

7. The contention of the appellant's learned counsel that fiscal matter was involved and such matters are always considered as those having recurring cause of action, therefore, the delay should be condoned. This contention of the learned counsel for the appellant is not acceptable in view of judgment of the Supreme Court of Pakistan reported as 2023 SCMR 866 titled "Kirama Khan versus IG Frontier Corps and others". The relevant portions of the judgment are as under:

"4. We have heard the learned counsel for the petitioner and carefully examined the case record. We have also considered his arguments and gone through the judgments of this Court cited by him. The learned ASC for the petitioner has admitted that the departmental appeal filed by the petitioner was barred by time. He has however tried to explain that the appeal was filed immediately after his release from custody on 29.11.2017. We note that the appeal was filed on 06.01.2018. The learned ASC has not been able to explain



JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in brief as per the memo and grounds of appeal are that he was serving as Patwari (BPS-09); that during service, a complaint was lodged against him, resultantly, vide order dated 06.03.2020, he was dismissed from service; that feeling aggrieved from the order dated 06.03.2020, he appealed to the Appellate Authority i.e. Commissioner Kohat Division (respondent No.2) and the respondent No.2 reinstated the appellant into service for the purpose of de-novo inquiry; that de-novo inquiry was conducted and the appellant was reinstated into service vide order dated 26.08.2020; that before his reinstatement, his alleged juniors were promoted to the post of Kanungo (BPS-12) vide impugned order dated 29.06.2020 and the appellant was ignored as he, at that time, was dismissed from service; that feeling aggrieved of the impugned promotion order, he filed departmental appeal but the same was not responded, hence, the instant service appeal.

2. 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.

3. We have heard learned counsel for the appellant and learned District Attorney for official respondents and learned counsel for private respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.5799/2021

Date of presentation of appeal.....02.06.2021
Dates of Hearing.....09.09.2024
Date of Decision.....09.09.2024

Mr. Khalid Zaman, Patwari (BPS-09), Revenue Department,
District Karak.....(Appellant)

Versus

1. **The Senior Member Board of Revenue, Khyber Pakhtunkhwa Peshawar.**
2. **The Commissioner Kohat Division at Kohat.**
3. **The Deputy Commissioner, District Kohat.**
4. **Mr. Altaf Mehmood, Kanungo office of the Deputy Commissioner, District Karak.**
5. **Mr. Rafiq Ullah, Kanungo, office of the Deputy Commissioner, District Karak.....(Respondents)**

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For official respondents
Mr. Mujahid Islam Asif, Advocate.....For private respondents

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 29.06.2020
WHEREBY JUNIORS TO THE APPELLANT
I.E. PRIVATE RESPONDENTS NO.4 & 5 HAVE
BEEN PROMOTED TO THE POST OF
KANUNG (BPS-11) WHILE THE APPELLANT
HAS BEEN IGNORED AND AGAINST NOT
TAKING ACTION ON THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITHIN THE
STATUTORY PERIOD OF NINETY DAYS.**
