

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 1070/2022

Date of presentation of Appeal.....22.06.2022
Date of Hearing.....01.10.2024
Date of Decision.....01.10.2024

Sabir Ali, Ex-Constable Police Station Jarma, District Kohat.
.....*Appellant*

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. The Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer, District Kohat.

.....(*Respondents*)

Present:

Syed Mudasir Pirzada, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant, Sabir Ali, was appointed as a Cook Constable in District Police, Kohat. Disciplinary proceedings were initiated against him on the allegations that, while posted at PS Jarma, Kohat, he was involved and arrested in case FIR No. 267 dated 10/10/2013, under Section 9B of the CNSA of the PS Usterzai, District Kohat, with regard to the recovery of 500 grams of Chars. He was found guilty in the inquiry proceedings and the respondent department issued an order for his removal from service on 15/01/2014. Feeling aggrieved by the removal order, the appellant submitted departmental appeal on

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28/01//2014, which was not accepted vide order dated 05/03/2014 by respondent No. 2. He there-after filed mercy petition (copy of which is not available on file), however, the same was also rejected vide order dated 26/04/2022 by respondent No. 1. The appellant has now approached this Tribunal by filing the present appeal for redressal of his grievance.

2. The respondents were summoned and contested the appeal by filing their respective written replies/comments.

3. The learned counsel for the appellant contended that the orders dated 15/01/2014, 05/03/2014 and 26/04/2022 violated legal norms and principles of natural justice, as the removal order was executed without conducting a regular inquiry or issuing a charge sheet and statement of allegations. He next contended that the actions of the respondents violated Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, alleging arbitrary and mala fide conduct. He further contended that the appellant was neither given a show-cause notice nor an opportunity for a personal hearing before his removal, leading to a decision condemning him unheard. Lastly, he argued that the appeal in hand may be accepted as prayed for.

4. On the other hand, the learned Deputy District Attorney for the respondents opposed the contentions of the learned counsel for the appellant and contended that the FIR lodged against the appellant for possession of Chars constituted moral turpitude, warranting disciplinary proceedings. He next contended that a proper departmental inquiry was conducted, providing the appellant with opportunities for defense, culminating in a guilty finding and making


01/10/2024

the removal order dated 15/01/2014 legally tenable. He further contended that during the departmental appeal, the appellant was personally heard and his departmental appeal was rejected due to lack of merit. He next argued that the appellant's subsequent mercy petition filed after eight years did not alter the legitimacy of the initial proceedings and decisions. Finally, he contended that the appeal in hand is time-barred and lacks legal standing. He concluded by stating that all procedural requirements were adhered to, leading to valid and enforceable orders, therefore, the appeal in hand is liable to be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the record shows that the appellant was removed from service vide order dated 15/01/2014, passed by the District Police Officer, Kohat. This order was challenged by the appellant through a departmental appeal filed on 28/01/2014, which was not accepted vide order dated 05/03/2014 by the Deputy Inspector General of Police, Kohat. The appellant was legally required to challenge this order by filing a service appeal within 30 days of the communication of the order. Instead, he filed a mercy petition in the year 2022, which was also rejected vide order dated 26.04.2022. The filing of a late mercy petition and its subsequent rejection do not legally extend the period of limitation. It is an established legal requirement that an appeal against such an order should be filed within stipulated time. The appellant's failure to adhere to the timeline demonstrates not only indolence but also

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negligence in exercising his right to appeal in a timely manner. The law demands diligence and exceptions to the limitation period require a justified rationale for the delay, supported by an application for condonation of delay, which the appellant did not submit. The judgment of the Supreme Court of Pakistan, reported as PLD 2015 SC 212, underscores that limitation laws are not merely technical requirements; they constitute essential elements of legal proceedings. This ruling establishes that allowing appeals outside the limitation period without legitimate reasons and due process undermines the integrity of the judicial system and is impermissible in a state governed by law and the Constitution. Given the lack of an application for condonation of delay and the appellant's failure to adhere to the legally prescribed period for filing an appeal, this Tribunal finds the current service appeal to be time-barred.


7. The guiding precedent articulated in the Supreme Court's judgment reported as 1987 SCMR 92 establishes a clear procedural boundary: if an appeal is to be dismissed due to being time-barred, its merits need not be discussed. This precedent ensures that procedural rules regarding the filing periods are strictly enforced, thereby safeguarding the integrity of the judicial process. The statute underpinning the appeal process imposes explicit deadlines within which appeals must be filed. These limitations serve critical purposes: ensuring legal certainty, preventing protracted litigation and protecting the rights of parties by promoting the prompt resolution of disputes. In the present case, the appellant was required to submit the appeal within the statutory limitation but failed to


Amir
01/10/2024

comply with this mandate. Moreover, in accordance with the precedent set forth in 1987 SCMR 92, this Tribunal is precluded from evaluating the substantive arguments, as the appeal falls outside the permissible timeframe.

8. Consequently, the appeal stands dismissed as time-barred. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 01st day of October, 2024.*


AURANGZEB KHATTAK ^{01/10}₂₀₂₄
Member (Judicial)


FARZEHA PAUL
Member (Executive)

Nacem Amin

10.09.2024 1. Appellant in person present. Mr. Naseer Uddin Shah learned Assistant Advocate General for the respondents present.

2. Appellant requested for adjournment on the ground that his counsel was not available today. Last chance is given. To come up for arguments on 01.10.2024 before D.B. P.P given to the parties.

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PESHAWAR


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman

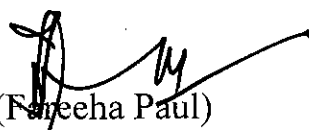
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ORDER
01st Oct, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Usman, DSP (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, the appeal stands dismissed being time-barred. Parties are left to bear their own costs. File be consigned to the record room.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 01st day of October, 2024.*


(Fareeha Paul)
Member (Executive)


(Aurangzeb Khattak)
Member (Judicial)
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