KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.4934/2020

Date of presentation of appeal.....20.05.2020
Dates of Hearing.....19.09.2024
Date of Decision.....19.09.2024

Mr. Meraj Gul, Ex-Village Secretary, Union Council Kakshal-I, Peshawar.....***(Appellant)***

Versus

1. **The Secretary** Local Government, Elections & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Director** Local Government, Elections & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Assistant Director,** LG&RD Department, Peshawar.

.....***(Respondents)***

Present:
Mr. Noor Muhammad Khattak, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 09.09.2008 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant's case as per memo and grounds of appeal are that he was appointed as Village Secretary (BPS-06) in the respondent department; that he was charged in FIR No.787 U/S 302/34 PPC P.S Badaber, Peshawar; that on the ground of the said involvement in the criminal case,

he allegedly submitted application for leave; that he was placed suspended by the department and vide impugned order dated 09.09.2008 he was dismissed from service; that after making compromise, he earned acquittal in the Court of Additional Sessions Judge-IX on 06.12.2019; that feeling aggrieved from the impugned order dated 09.09.2008, he filed departmental appeal on 23.01.2020 but the same was not responded, hence, the instant service appeal.

02. 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.

03. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

04. 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).

05. Record reveals that for the first time, the appellant appeared and obtained BBA (Bail Before Arrest) on 28.11.2017. Before that date, he had remained absconder and was ultimately declared as proclaimed offender vide order dated 27.07.2017. Therefore, he does not deserve any relief.

06. In this respect reliance is placed on 2017 SCMR 965 titled "Federation of Pakistan through Secretary Ministry of Defence and another Versus Bashir Ahmed, SBA in MES, Ministry of Defence, GE (Army), Nowshera". Para-04 of the said judgment is relevant, which is reproduced as under:

> *"4. It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent's counsel himself stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012.Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members. To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconsion or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion amounts to showing mistrust in the judicial system. Learned counsel for the respondent was asked to show as to whether in any case, this Court has condoned the absconsion and the departmental action was set aside, he was unable to satisfy this Court on this point. In the circumstances, the case relied upon by the respondent's counsel is of no help to the case of the respondent as it has no relevant in the facts and circumstances of this case."*

07. We may also refer to the judgment of the Federal Service Tribunal, reported as 1996 PLC (CS) 988 titled "Zarghunshah Versus Surgeon General, General Headquarter, A. G. Branch, MED DTE DMS 3(B), Rawalpindi and another" wherein, while

dealing with the issue of absence of civil servant after his involvement in criminal case, found as under:

"5. We have heard the learned counsel for the parties and have also perused the record. It appears from the record that the appellant had remained absent from duty with effect from 5 5 1990 but, in spite of notices, he did not bother to submit any application for leave nor he tendered any explanation therefor. If the appellant's submission that he had submitted an application for one month's leave on 5 5 1990 is admitted even then he has no case because he was arrested on 17 4 1993 and was released on bail on 6 6 1993. He has failed to show any request for extensions of his leave after 5 6 1990. The appellant's contentions that no inquiry was conducted in his case and he was penalized without affording any opportunity are also of no avail to him as it is an admitted fact that, after committing murder, he had remained absent from 5 5 1990. This Tribunal has observed in several cases that a 'detailed enquiry is not necessary where the charge stands proved/established and a Government servant cannot insist that disciplinary proceedings should be initiated in a particular manner. The appellant's acquittal was effected through a compromise and he had never been confronted with any trial. Therefore, if he desired, he could have informed the department about his tragedy. In our view, the appellant

had remained under custody for a short period, whereas he mainly remained absent from duty un-authorizedly and, therefore, the respondents were justified in taking action against him. The respondents have also alleged that earlier too the appellant was habitual of remaining absent without any permission for leave. The appellant was, therefore, rightly held guilty of the charge and was justifiably punished. The cases relied upon by, the learned counsel for the appellant are distinguishable, and therefore, no credence is placed on them"

08. Relying on the above judgment, we find that the appellant has not reasonably explained his absence of more than 11 years, after his involvement in the criminal case and before surrendering. There is an application for condonation of delay, rather a strange attempt has been made by making application to the authority for 120 days earned leave on the ground of construction of house. There is also no effort of the appellant stated in his memo and grounds of appeal to explain the absence of more than 11 years, after his involvement in the criminal case till his appearance before the Court on 28.11.2017. There is no denial of the fact that criminal and departmental proceedings can run simultaneously and independently without affecting each other. In case charge is established in the departmental proceedings, the acquittal in a criminal case would not affect the departmental action. Reliance is placed on 2021 PLC (C.S) 587

"The District Police Officer, Mianwali and 2 others Versus Amir Abdul Majid" wherein, the august Supreme Court of Pakistan has held that:

> *"Concurrent disciplinary and criminal proceedings against a civil servant---Acquittal in criminal proceedings---Whether such acquittal could be a ground for reinstatement in service---Civil servant facing expulsive proceedings on departmental side on account of his indictment on criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient---Additional reasons may exist to disregard such acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, required a higher standard of proof so as to drive home the charge beyond doubt--Procedural loopholes or absence of evidence at times resulted in failure to sustain the charge essentially to maintain safe administration of criminal justice out of abundant caution---Departmental jurisdiction, on the other hand, could assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error."*

09. The departmental appeal of the appellant was barred by time as he did not file the same during the period of absconsion, therefore, the appeal in hand is not maintainable. We in this respect rely on a recent judgment of Supreme Court of Pakistan reported as 2023 SCMR 291 titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala versus Khalid Mehmood and others" the relevant para is reproduced below:

> *"12. The law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur and when no sufficient cause for such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. There is no relaxation in law affordable to approach the court of law after deep slumber or inordinate delay under the garb of labeling the order or action void with the articulation that no limitation runs against the void order. If such tendency is not deprecated and a party is allowed to approach the Court of law on his sweet will without taking care of the vital question of limitation, then the doctrine of finality cannot be achieved and everyone will move the Court at any point in time with the plea of void order. Even if the order is considered void, the aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does*

not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period, authorizing a litigant to enforce his existing right within the period of limitation. The Court is obliged to independently advert to the question of limitation and determine the same and to take cognizance of delay without limitation having been set up as a defence by any party. The omission and negligence of not filing the proceedings within the prescribed limitation period creates a right in favour of the opposite party. In the case of Messrs. Blue Star Spinning Mills LTD -Vs. Collector of Sales Tax and others (2013 SCMR 587), this Court held that the concept that no limitation runs against a void order is not an inflexible rule; that a party cannot sleep over their right to challenge such an order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings. In the case of Muhammad Iftikhar Abbasi Vs. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for

enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent. While in the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others (2022 SCMR 933), it was held that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact this law has been premeditated to dissuade the claims which have become stale by efflux of time. The litmus test therefore always is whether the party has vigilantly set the law in motion for redress. The Court under Section 3 of the Limitation Act is obligated independently rather as a primary duty to advert the question of limitation and make a decision, whether this question is raised by other party or not. The bar of limitation in an adversarial lawsuit brings forth valuable rights in favour of the other party. In the case of Dr. Muhammad Javaid Shafi Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within

the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself."

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

11. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19th day of September, 2024.

KALIM ARSHAD KHAN
Chairman

RASHIDA BANO
Member (Judicial)

Mutazem Shah

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ORDER

19th Sep. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. 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 19th day of September, 2024.*

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Mutazem Shah