

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
 RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 7415/2021

Date of presentation of Appeal.....15.09.2021
Date of Hearing.....09.10.2024
Date of Decision.....09.10.2024

Sajjad ur Rehman, Ex-Constable No. 6666/2364/FRP, Bannu Range
Bannu.*Appellant*

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
 3. The Superintendent of Police FRP Bannu.
-(*Respondents*)

Present:

Syed Noman Ali Bukhari, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): Facts of the case are that the appellant was Constable in FRP Bannu and disciplinary proceedings were initiated against him on the allegation of his absence from duty without prior permission of the competent authority and his failure to make his arrival to his duty station. On conclusion of the disciplinary proceedings, the appellant was awarded major penalty of dismissal from service vide impugned order dated 09.06.2011. Feeling aggrieved, the appellant filed departmental appeal, which was not addressed within the statutory period. Hence,

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he filed the instant appeal before this Tribunal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the dismissal order of the appellant dated 09.06.2011 is void and contrary to law as it was issued with retrospective effect, without following the proper procedural protocols mandated under the E&D Rules of 1973.

He next contended that the appellant was denied the right to a fair hearing, violating Article 10-A of the Constitution of the Islamic Republic of Pakistan and the principle of "Audi Alterum Partem," which are essential for ensuring natural justice. He further contended that no show-cause notice was issued before taking the adverse action, violating the procedures outlined in Rule 8-A of the E&D Rules as well as principles outlined by the Federal Shariat Court. He also contended that the charge of willful absence was flawed due to the appellant's medical condition resulting from a legitimate terrorist incident. The procedure for handling such absences was not followed. He next argued that the inquiry, if any, conducted in absence of a charge sheet, holds no legal standing, referencing the Supreme Court judgment cited as 2008 SCMR 609. He further argued that the dismissal order is also challenged on the grounds of disproportionality of punishment given the appellant's circumstances and the lack of personal hearing opportunities. In the last, he argued that the

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impugned order may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant remained absent from duty without sanctioned leave for 6 months and 23 days, which constitutes willful neglect of duty. He next contended that a thorough departmental inquiry was conducted, where the appellant was issued a charge sheet and given the opportunity to respond, which he failed to do in a timely manner. He further contended that charge sheet was duly served at the appellant's home address and his failure to reply indicates a disregard for the proceedings. He also contended that the inquiry officer's report conclusively found the appellant guilty, thereby justifying the recommended major punishment. He next argued that all procedural requirements were observed and the appellant was given adequate opportunities to defend himself, aligning with Article 4 of the Constitution regarding due process. In the last, he argued that the departmental appeal and service appeal of the appellant are time-barred, filed over 11 years post-dismissal, hence not maintainable and is liable to be dismissed on this ground alone.

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

6. Perusal of the record would show that the appellant was dismissed from service vide order dated 09.06.2011 due to absence from duty without obtaining prior permission from the competent

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authority. This order was challenged by the appellant through filing of departmental appeal, which was rejected on 24.08.2011. The appellant did not contest this rejection order before this Tribunal, potentially undermining his position. Nearly a decade later, the appellant filed a revision petition dated 15.04.2021 with the Provincial Police Officer, Khyber Pakhtunkhwa but received no response. Consequently, this appeal was filed on 15.09.2021. However, this appeal is time-barred, as excessive delay had not been sufficiently justified by the appellant. The appellant though filed an application for condonation of delay with 04 justifications. The appellant's first justification as regard the limitation is that the limitation is a mere technicality is contested. The Supreme Court of Pakistan (2011 SCMR 08) affirms the significance of limitation rules, suggesting that overlooking them could impact case merit substantially. Therefore, this justification is insufficient. The appellant second justification is that the impugned order was passed with retrospective effect was improper. However, while general penalties should not be retrospective, exceptions arise when absenteeism from duty is involved. Here, the retrospective order dated 09.06.2011 aligns with the appellant's documented absenteeism, thus remaining valid and enforceable under departmental rules. The third justification of the appellant is that the pandemic conditions (beginning March 2020) as a cause for delay. Nevertheless, the court notes the appellant's dismissal in 2011 occurred well before the pandemic, rendering this argument irrelevant to the current case timeline. The appellant fourth justification is that the void orders

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invite no limitation. However, as interpreted in a recent Supreme Court ruling ("Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala vs. Khalid Mehmood"), limitations apply even to orders alleged as void unless proven legally null by procedural faults, which the appellant failed to demonstrate in this instance. Supreme Court of Pakistan in its judgment dated 03.10.2022 titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala Versus Khalid Mehmood and others" passed in Civil Appeals No. 1685 to 1687 of 2021 has held as 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

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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 Khudaded 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 is 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

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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."

In light of these observations, it is clear that the appellant has not adequately justified the delay spanning approximately a decade.

7. In conclusion, due to the appellant's failure to act within the requisite time, we are compelled to dismiss the appeal on the grounds of limitation. The appellant's delay precludes any evaluation of the substantive merits of the underlying case. As such, the appeal is dismissed, underscoring the critical importance of adhering to procedural timelines in seeking legal remedies. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 09th day of October, 2024.*



AURANGZEB KHATTAK 09/10/2024.
Member (Judicial)



RASHIDA BANO
Member (Judicial)

ORDER

09th Oct, 2024

1. Learned counsel for the appellant present. 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, due to the appellant's failure to act within the requisite time, we are compelled to dismiss the appeal on the grounds of limitation. The appellant's delay precludes any evaluation of the substantive merits of the underlying case. As such, the appeal is dismissed, underscoring the critical importance of adhering to procedural timelines in seeking legal remedies. 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 09th day of October, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak)
Member (Judicial)
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2024