

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Dost Muhammad Khan

Civil Petition No.1472 of 2013

(On appeal from the judgment dated
14.05.2013 passed by the Federal Service
Tribunal, Islamabad in Appeal
No.269(P)CS/2012)

The Commandant Khyber Pakhtunkhwa Constabulary FC Head
Quarters, Peshawar and another

... Petitioners

versus

Amir Ullah Islam and another

... Respondents

For the petitioners: Ms. Shireen Imran, ASC

For respondent No.1: Mr. Ijaz Anwar, ASC
Mr. M.S.Khattak, AOR

Date of hearing: 03.03.2014

ORDER

Dost Muhammad Khan, J.— This CPLA is barred by 4 days.

CMA No.5578/2013 has been filed, seeking condonation of delay on the ground that the impugned order is *void ab initio*, without jurisdiction and no limitation runs against the void order and because, the delay occurred in filing of the petition was due to misunderstanding and mis-calculation of time by the petitioner department.

2. We are in no manner convinced from the ground taken in the CMA and the submissions made at the bar by the learned ASC for the petitioners. On this ground alone, the main petition is

liable to be dismissed, hence, the delay cannot be condoned and the CMA is dismissed.

3. There is another CMA No.5577/2013, seeking suspension of the operation of impugned judgment dated 14.05.2013 given in W.P.No.269(P)CS/2012, passed by the Federal Service Tribunal (FST), Islamabad. However, as we are deciding the main petition on merits, therefore, this CMA having become infructuous, is disposed of.

4. Precisely, stating facts of the case are that Amir Ullah Islam, respondent No.1 was working as Naib Subidar in Platoon No.276, Frontier Constabulary, was stationed at Khyber Pakhtunkhaw. During operation in F.R. Peshawar, he along with many others, allegedly, refused to launch strike against the militants, thus, the main charge against him and his co-employees, was that they had not only disregarded the command of the superior officer but also had shown cowardice.

5. Departmental inquiry was conducted but during that no opportunity of hearing was provided to him like his colleagues and at the conclusion he was dismissed from service.

6. After exhausting other remedies, he filed Appeal No.296(P)CS/2010 before the FST, Islamabad, which was allowed vide judgment dated 06.09.2010 directing the respondent (therein) to hold de-novo proceedings against the appellant(s) in accordance with the law and the rules, and also to reinstate him into service during the period of inquiry.

7. It was further directed in the judgment by the FST that the inquiry be completed, preferably, within a period of four months and the question of payment of back benefits would depend upon the outcome of the fresh proceedings.

8. In the second round, same and similar treatment was given to respondent No.1 and not a little respect was shown to the judgment of the FST, as it was not complied with in letter and spirit, rather the inquiry was conducted in the old fashion and according to the whims and wishes of the superiors of respondent and that of the inquiry officer, as at that stage too, respondent No.1 was condemned unheard, so much so that he was not informed about the result of inquiry, thus, he again approached the FST, Islamabad, which passed the judgment dated 14.05.2013, impugned herein, and while relying upon the ratio decidendi, laid down by this Court in the case of Pakistan International Airlines Corporations v. Shaista Naheed (2004 SCMR 316) set aside the dismissal order of respondent, declaring it unlawful and illegal. It was further directed that the earlier judgment be given effect from 06.09.2010 in its letter and spirit by issuing clear order of reinstatement of respondent No.1 into service. However, the petitioners were not restrained from conducting fresh inquiry.

9. The learned ASC for the petitioners vehemently argued that the appeal filed before the FST was barred by time, however, this contention, in our view, has no legal force because the second inquiry conducted, was in disregard of the earlier judgment of the FST and because, the result of the same was not communicated to respondent No.1 as required under the rules. Moreover, the

co-employees of respondent No.1 have already been reinstated into service as was stated at the bar.

10. Learned counsel for the replying respondent stated at the bar that the delay in filing the appeal before the FST was for the reason stated above, besides the fact that during that period the FST was not vested with the powers and jurisdiction to implement its judgments/orders till the time this Court directed the government to amend the law on the subject investing the FST with powers to implement its judgments and orders by adopting coercive measures.

11. The plea of the learned ASC for the replying respondent is based on sound reasons, to which no exception could be taken, more so, the petitioner-side has committed wrong to the respondent twice in two successive inquiries and also disregarded the binding judgment of the FST in this regard with all convenience.

12. Accordingly, for reasons stated above, the petition being barred by time and on merits too, does not deserve any indulgence by this Court, hence the same is dismissed and leave to appeal declined.

Judge

Judge

Islamabad, the
3rd March, 2014
Nisar/*

Not Approved For Reporting