

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, CJ.  
MR. JUSTICE IJAZ UL AHSAN  
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

**Civil Petition No.4862 of 2018**

*[Against the judgment dated 23.11.2018 of the Federal Service Tribunal, Islamabad passed in Appeal No.508(P)CS/2013]*

Ajmir Shah, Ex-Sepoy.

...Petitioner (s)

**VERSUS**

The Inspector General, Frontier Corps KPK and  
another

...Respondent(s)

For the petitioner(s)

Mr. Aftab Alam Yasir, ASC  
Syed Rifaqat Hussain Shah, AOR

For Respondents No.1-2

Mr. Nasir Mehmood, ASC

Date of hearing:

19.08.2020.

...

**ORDER**

**Gulzar Ahmed, CJ-**. The petitioner was employed as Sepoy with Bajour Scouts of the Frontier Corps. He deserted his post, pursuant to which he was proceeded against under Section 8(c) of the Frontier Corps Ordinance, 1959 (**the Ordinance of 1959**). On conclusion of trial against him, he was awarded punishment of dismissal from service vide letter dated 23.10.2008. Such punishment was imposed upon him under Section 10 of the Ordinance of 1959. The petitioner sat over the said order of punishment to him and did not file any departmental appeal, rather on 28.03.2013, he filed a departmental appeal on the basis of the judgment of

the Federal Service Tribunal (**the Tribunal**) dated 29.11.2011, passed in Service Appeal No.300(P)(CS)/2011 of one Muhammad Ali, Ex-Hawaldar of Bajour Scouts, where the punishment of dismissal from service of Muhammad Ali is said to have been converted by the Tribunal into compulsory retirement and it was also alleged that the petition filed by the Frontier Corps (**F.C.**) against such judgment of the Tribunal was dismissed by this Court and the order of the Tribunal was implemented. This departmental appeal of the petitioner was rejected by the Inspector General, F.C. and such was communicated to the petitioner vide letter dated 31.05.2013. The petitioner filed service appeal before the Tribunal on 01.07.2013, which by the impugned judgment dated 23.11.2018 came to be dismissed as time barred.

2. Learned counsel for the petitioner has contended that the petitioner was waiting for the decision on the service appeal of Muhammad Ali, Ex-Hawaldar and after the judgment was announced by the Tribunal, the same was upheld by this Court and it having been implemented, the petitioner filed departmental appeal and that the said departmental appeal having been rejected on merit and not on the ground of limitation, the service appeal before the Tribunal was in time. In this regard the learned counsel relied upon the case of Usman Ali Chhachhar vs. Moula Bukhsh Chhachhar (2019 SCMR 2043) = [2020 PLC (CS) 34] to contend that a 2-Member Bench of this Court has referred the matter to the larger Bench for considering the question of maintainability of service appeal before the Tribunal when the departmental representation is filed after its limitation period has lapsed.

3. We have considered the submissions of the learned counsel for the petitioner and have also gone through the record of the case.

4. The admitted position on the record is that the petitioner was proceeded against under Section 8(c) of the Ordinance of 1959 and the charge having been proved against him, he was imposed penalty of dismissal from service vide letter dated 23.10.2008. Such penalty was imposed upon the petitioner under Section 10 of the Ordinance of 1959. Section 26 of the said Ordinance has allowed the Federal Government by Notification in the official Gazette to make rules and clause (d) thereof, inter alia, provides for making of rules for appeals. Pursuant to this provision of the Ordinance of 1959, the Federal Government has made the Frontier Corps Rules, 1961 (**the Rules of 1961**). Rule 11 of these Rules provides, inter alia, that every member of the Frontier Corps shall only be entitled to appeal against an order imposing upon him any of the penalties under Section 10 and Rule 14 thereof provides that such an appeal shall be preferred within one month from the date on which the appellant is informed of the order appealed against, unless the period is extended for unavoidable causes of delay so certified by the authority against whose order the appeal has been preferred.

5. On reading of the above provisions of the Ordinance of 1959 and the Rules of 1961, it is clear that the petitioner was entitled to file departmental appeal against an order imposing upon him penalty of dismissal from service and such departmental appeal had to be filed by the petitioner within one month from the date on which he was informed of the order appealed against.

6. It is admitted position that the petitioner filed the departmental appeal against the order of dismissal dated 23.10.2008 on 28.03.2013, after more than 4 years and 5 months. The petitioner has not attached with the petition the copy of departmental appeal, which he had filed

against the order of his dismissal. However, as canvassed by the learned counsel for the petitioner before us that the petitioner did not file the departmental appeal, for the reason that service appeal of Ex-Hawaldar, Muhammad Ali was pending before the Tribunal and petitioner waited for the decision of the said service appeal, and only after such service appeal of Muhammad Ali was decided by the Tribunal, converting his penalty of dismissal to compulsory retirement, upheld by this Court and implemented by the department, the petitioner filed the departmental appeal.

7. In our view, such could not have been a sufficient cause or reason for the petitioner to file his departmental appeal after more than 4 years and 5 months. It seems that petitioner himself was not aggrieved of the order by which he was dismissed from service and the assertion of the petitioner that he waited for the result of the service appeal of Ex-Hawaldar Muhammad Ali, shows that the petitioner relied upon the grievance of Ex-Hawaldar, Muhammad Ali and not of his own. Had the Ex-Hawaldar Muhammad Ali lost his case, that would have been the end of the matter and the petitioner would have not raised grievance against the order of his dismissal. The law does not leave choice to an employee to raise his grievance after his colleague is succeeded in the case. The employee has to raise his grievance immediately when cause to him has arisen and more so within the limitation period for it is also provided by law. We may further note that Rule 14 in clear terms provides for filing of a departmental appeal within one month from the order imposing penalty. The extension of period for filing of a departmental appeal is also provided in the very rule i.e. for unavoidable causes of delay so certified by the authority against whose order the appeal has been preferred. We have not been shown nor is it pleaded in the memo of appeal that the authority, who has imposed penalty

upon the petitioner, has extended the period for filing of the departmental appeal by the petitioner. No such certification of the authority is available on the record.

8. The submission of the learned counsel for the petitioner that the departmental appeal of the petitioner has been decided on merits and thus, the limitation for filing of the departmental appeal stood impliedly condoned by the appellate authority, we are not impressed by such argument of the learned counsel for the petitioner for the reason that the Rules itself provide for the manner and mechanism in which the period of limitation for filing of the departmental appeal could be extended i.e. unavoidable causes of delay so certified by the authority against whose order the appeal has been preferred. The implication of this Rule, as it appears, is that the petitioner was required to apply to the authority against whose order he wishes to file an appeal for extension of time citing unavoidable causes of delay and only after authority has so certified, the delay in filling of the departmental appeal could be condoned. As the record suggests, the petitioner has not applied to the authority seeking extension of time for filling of a departmental appeal.

9. It is well settled principle of law that where a law requires doing of something in a particular manner it has to be done in the same manner and not otherwise. Reliance in this respect is place upon the cases of Muhammad Hanif Abbasi vs. Imran Khan Niazi (PLD 2018 SC 189), Shahida Bibi vs. Habib Bank Limited (PLD 2016 SC 995) and Human Rights Cases Nos.4668 of 2006 etc. (PLD 2010 SC 759).

10. Further we note that the power for extension of period for filing of a departmental appeal under Rule 14 was vested in the authority against whose order the appeal is preferred and no power of extension of a period

for filing of a departmental appeal apparently seems is vested with the appellate authority under the scheme of law as laid down in the Ordinance of 1959 and the rules made under it. Thus, we note that the principle of implied extension could not be pressed in the present case, for that, the appellate authority in law was not vested with the power of granting extension in filing of a departmental appeal.

11. Reliance of the learned counsel for the petitioner on Usman Ali Chhachhar's case (supra) is also of not much help, for that, in the said case the Court has considered, inter alia, the provision of the Civil Servants (Appeal) Rules, 1977, which rules are altogether different from the rules made under the Ordinance, 1959, which were not subject matter of the cited case and thus, is distinguishable.

12. We are, therefore, of the considered view that the Tribunal in the impugned judgment has rightly found the service appeal of the petitioner to be time barred and thus, find no reason to interfere with the same. The petition is dismissed and leave refused.

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**

**Islamabad, the**  
19<sup>th</sup> August, 2020  
Approved for reporting  
*Rabbani/\**