

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Amin-ud-Din Khan
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Civil Petition No. 1181-L of 2016

Appeal against the judgment dated
15.02.2016 passed by the Punjab
Service Tribunal, Lahore in Appeal
No.899/2016

Tassawar Hussain

...Petitioner

Versus

The Regional Police Officer, Multan and another

...Respondents

For the Petitioner:

Mr. Tariq Javaid, ASC

For the Respondents:

Mr. Baleegh-uz Zaman Ch. Addl. A.G.
Punjab

Date of Hearing:

24.09.2024

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition for leave to appeal is directed against the judgment dated 15.02.2016 passed by the Punjab Service Tribunal, Lahore, in Appeal No.899/2016, whereby the appeal filed by the petitioner was dismissed.

2. The compendium of facts of the case unveil that the petitioner was performing his duty as a Constable in the Punjab Police. While he was posted in District Police Line, Multan, a show cause notice was issued to him that he absented from duty from 04.11.2010 to 10.01.2011 without any reasonable excuse, leave, or permission from the competent authority. According to the petitioner, neither any show cause notice was served upon him nor was he afforded any opportunity of defense or

personal hearing. However, the Superintendent of Police Headquarters, Multan, *vide* order dated 11.01.2011, awarded him with the major penalty of dismissal from service by means of an *ex-parte* order. The petitioner further asserted that no dismissal order was served upon him and during that period, he was implicated in FIR No.434 of 2010, lodged at Police Station, City Shujabad on 09.08.2010 under Section 302 and 324 P.P.C. The petitioner was arrested on 30.08.2010, however, he was granted bail on 25.08.2015. Thereafter, he obtained the copy of the dismissal order on 01.09.2015 and filed the departmental appeal on 09.09.2015 which was rejected by the competent authority for being barred by time, and the said rejection order of the departmental appeal was maintained by the learned Tribunal *vide* impugned judgment. According to the copy of the judgment attached with C.M.A No.633/2022 filed by the counsel for the petitioner, it reflects that the petitioner has been acquitted by the learned Lahore High Court in Criminal Appeal No.371/2013 (F.I.R No.434/2010) *vide* judgment dated 15.02.2022.

3. The learned counsel for the petitioner argued that even at the time of passing the dismissal order the petitioner was incarcerated and no such order was served upon him through the jail authorities, therefore he was completely unaware of whether he had been dismissed from service or not. He further argued that after his release on bail, the departmental appeal was filed, but it was not considered in accordance with the law, rather the petitioner was non-suited on the ground that the departmental appeal was time-barred.

4. On the contrary, the learned Additional Advocate General, Punjab, argued that the departmental appeal could have been preferred by the petitioner from jail, but no such effort was made by him, hence the learned Tribunal has rightly passed the judgment and considered the departmental appeal time-barred. However, he could not demonstrate whether the dismissal order was served upon the petitioner or not in jail for further proceedings at his end.

5. Heard the arguments. The nitty-gritties of the case unequivocally demonstrate that the petitioner was issued a show cause notice on the allegation of absence without leave. This is also a ground reality which cannot be ignored inconspicuously that when the show cause notice was issued on 25.11.2010 and the dismissal order was passed on 11.01.2011, the petitioner was behind the bars and obviously, he was not in a position

to diligently pursue and avail the remedy of departmental appeal in accordance with law. The *bona fides* of the petitioner could not be doubted that when he was incarcerated, it was not an easy or comfortable task, rather it was beyond his control, to respond to the show cause notice, which was never served upon him, or to file a departmental appeal against the dismissal order, which was also never served upon him, within the stipulated time. However, when he was released from jail, he immediately filed the departmental appeal which was rejected. He then approached the learned Tribunal for redressal of his grievance but the appeal was dismissed on the ground of limitation.

6. We are mindful that the Service Tribunal is the first judicial fact-finding forum in service laws meant for civil servants where all relevant facts of the case in respect of matters relating to the terms and conditions of service of civil servants are required to be considered judiciously and not in a slipshod manner. The insight of discretion in the judicial power is preordained to advance the cause of justice in a judicious manner rather than perpetuating injustice. What happened in this case? The learned Tribunal failed to advert to the timeline of facts: when the petitioner was issued the show cause notice, whether it was served or not, the date of the dismissal order and whether that was served upon the petitioner or not, the state of play which prevented the petitioner from filing the departmental appeal within the prescribed period of limitation, and finally, whether the delay could be condoned or not. In all conscience, neither the overall conduct of the petitioner in pursuing his legal remedies depicts any negligent or reckless conduct nor does it appear to us that he deliberately failed to file the departmental appeal within time, and nor was any proof presented on the record to demonstrate that the petitioner was served with the show cause notice and dismissal order while he was in jail for him to pursue and avail the remedy of departmental appeal. In our comprehension, the departmental appeal could, no doubt, be transmitted by the petitioner through the jail superintendent/authority, provided that he received the dismissal order in jail, but in this case when no order was served, the petitioner cannot be declared guilty or solely responsible for the delay in filing of the departmental appeal. On the contrary, he was a victim of circumstances, therefore the department cannot take the refuge of limitation. We have also come across, time and again in different cases, that convicts used to send their memo of appeals, even hand-written, to the Appellate Courts

for consideration, but in case jail appeals are found to be barred by time, the Courts also have to be sanguine to the situation that the captive, having meager financial resources, might not have been in a position to engage counsel and file appeal in the normal course but due to lack of proper facilitation, assistance and hardship, they send appeals from jail premises even after the lapse of the limitation period. Thus, in order to advance the free flow of the administration of criminal justice, the Courts generally, under a sympathetic consideration, take a lenient view and condone the delay to decide the appeals on merits without sticking to the question of limitation.

7. In the present case, the question of limitation comes into sight as a mixed question of law and fact which brings together a number of factual controversies *vis-à-vis* the question of limitation. Therefore, it requires both legal and factual evaluation for the appropriate verdict. As a whole, mixed questions of law and fact necessitate a combination of scrutiny of questions of law and fact, which cannot be decided hypothetically, cursorily, or without appreciating the starting point of limitation in each case separately before nonsuiting any person on the ground of limitation.

8. As a result of the above discussion, the aforementioned civil petition is converted into an appeal and allowed. As a consequence, thereof, the impugned judgment of the learned Tribunal is set aside and the matter is remanded to the learned Tribunal to decide the service appeal of the petitioner on merits after affording a fair opportunity of hearing to the parties.

Judge

Judge

Judge

Islamabad

24th September, 2024

Khalid

Approved for reporting