

8/23

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(A.F.R.)

Civil Petition No.3287 of 2019

Against judgment dated 25.07.2019 of Federal Service Tribunal, Islamabad, passed in Appeal No.388(P)CS of 2019.

Kiramat Khan

...**Petitioner(s)**

Versus

IG, Frontier Corps & others

...**Respondent(s)**

For the Petitioner(s):

Mr. Zia ur Rehman Tajik, ASC

For the Respondent(s):

Mr. Nasir Mehmood, ASC

Date of Hearing:

18.08.2022.

ORDER

IJAZ UL AHSAN, J.- The petitioner seeks leave to appeal against a judgment of the Federal Service Tribunal, Islamabad ("the Tribunal") dated 25.07.2019. Through the impugned judgment, Appeal No.388(P)CS of 2019 filed by the petitioner was dismissed in *limine* having been found to be barred by time.

2. Briefly stated the facts of the case are that the petitioner was working with Khyber Rifles in the rank of Naik. On 26.07.2017, he was performing his duty as Signal Operator at Shaheed More Check Post, Torkham when a person named Amir Din S/o Tikka Khan Shinwari was arrested and a sum of 10,000 US Dollars was recovered from him. The concerned Subedar directed the petitioner to keep the accused under his watch. However, later the accused was directed to be released.

Subsequently, the said Amir Din complained that a sum of 2000 US Dollars had unlawfully been retained by officials of Khyber Rifles. The petitioner was put behind bars/quarter guard for 4 months and 12 days and was also demoted to the rank of Lance Naik. Upon his release, the petitioner preferred a departmental appeal and thereafter a constitutional petition bearing No.2267 of 2018 before the Peshawar High Court, Peshawar. The constitutional petition was dismissed for want of jurisdiction, vide order dated 25.02.2019 with an observation that he was at liberty to approach the appropriate forum. The petitioner therefore filed an appeal bearing No.388(P)CS of 2019 before the Tribunal on 28.03.2019, which was found to have been filed beyond the period of limitation and was dismissed in *limine* vide impugned judgment dated 25.07.2019.

3. The learned ASC for the petitioner at the very outset tried to argue the case on merits. It was however pointed out to him that the Tribunal had dismissed the petitioner's appeal in *limine* after recording findings that his departmental appeal before the competent authority as well as service appeal before the Tribunal were barred by time. He was therefore directed to address arguments to show either that the said appeals were not barred by time or if at all they were barred by time, it was a fit case for condonation of delay which the competent *fora* had failed to do. The attention of the learned ASC was drawn to the application for condonation of delay moved before the Tribunal. In the said application, the only ground taken for seeking condonation of delay was that the petitioner had invoked the

jurisdiction of the High Court under the bona fide belief that it was the correct forum and therefore he could not approach the Tribunal in time. It was prayed that the period of time spent before the wrong forum may be condoned and the appeal may be decided on merits. The learned ASC has reiterated the said ground. In addition, he has argued that the departmental appeal was filed after the petitioner had been released from custody in the quarter guard for 4 months and 12 days, although he had not moved an application for condonation of delay before the competent authority. The learned ASC has finally relied upon Managing Director, Sui Northern Gas Company Ltd, Karachi v. Ghulam Abbas & others (2003 PLC (CS) 796) and Province of Sindh & others v. Ghulam Fareed & others (2014 SCMR 1189) to argue that this Court encourages decisions on merits rather than non-suiting the parties on technicalities and that no limitation runs against a void order.

4. We have heard the learned counsel for the petitioner and carefully examined the case record. We have also considered his arguments and gone through the judgments of this Court cited by him. The learned ASC for the petitioner has admitted that the departmental appeal filed by the petitioner was barred by time. He has however tried to explain that the appeal was filed immediately after his release from custody on 29.11.2017. We note that the appeal was filed on 06.01.2018. The learned ASC has not been able to explain why the appeal was not immediately filed after his release and despite the fact that it was already barred by time the petitioner consumed

approximately another two weeks to file an appeal and that too without an application for condonation of delay explaining the reason for every day of delay as required under the law.

5. The learned ASC has also admitted that the appeal of the petitioner before the Tribunal was barred by time. He has however argued that he was pursuing a remedy before the High Court under the bona fide belief that he was before a right forum. In order to avail the benefit of Section 14 of the Limitation Act, 1908 it is imperative that a litigant seeking benefit of the said provision must show that he was prosecuting his remedy with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. The material words are, "due diligence and good faith" in prosecuting a remedy before a wrong forum. The term "due diligence" entails that a person taken such care as a reasonable person would take in deciding on a forum to approach. The learned ASC has attempted to argue that the law was unclear and there was ambiguity regarding the forum which the employees of Frontier Corps could approach for redressal of their grievances and that such confusion was ultimately resolved by this Court through a judgment reported as IG, HQ Frontier Corps v. Ghulam Hussain (2004 SCMR 1397) in which it was held that employees of the Frontier Corps shall be governed under the provisions of Frontier Corps Ordinance, 1959 and for the limited purpose would enjoy the status of civil servants. As such, they could avail their remedies before the Tribunal for redressal of their grievances. The

argument of the learned ASC for the petitioner is fallacious. This Court had as far back as 2004 clarified the law on the subject and held that employees of Frontier Corps will be deemed to be civil servants for the purpose of approaching the Tribunal for redressal of their grievances. Reference in this regard may be made to IG, HO Frontier Corps v. Ghulam Hussain (2004 SCMR 1397). The subsequent judgment reported as Commandant, Frontier Constabulary v. Gul Raqib Khan (2018 SCMR 203) merely reaffirmed the earlier judgment. In view of the fact that there was no confusion or ambiguity in the law, the argument of learned ASC that the petitioner was bona fide availing a remedy with due diligence before a wrong forum and should therefore be granted the benefit of Section 14 of the Limitation Act holds no water.

6. Adverting to the argument of learned ASC for the petitioner that there is no limitation against a void order, we find that in the first place, the learned ASC has not been able to demonstrate before us how the order of dismissal was a void order. In addition, this Court has repeatedly held that limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law. This principle has consistently been upheld, affirmed and reaffirmed by this Court and is now a settled law on the subject. Reference in this regard may be made to Parvez Musharraf v. Nadeem Ahmed (Advocate) (PLD 2014 SC 585) where a 14 member Bench of this Court approved the said Rule. Reference in this regard may also be made to

Muhammad Sharif v. MCB Bank Limited (2021 SCMR 1158),
Wajdad v. Provincial Government (2020 SCMR 2046).

7. In view of the fact that we have found that the departmental appeal as well as the service appeal of the petitioner were barred by time and no valid or lawful reason for condonation of delay was given and that the benefit of Section 14 of the Limitation Act was not available to the petitioner, we do not feel the necessity of discussing the merits of the case.

8. Even otherwise; the learned ASC for the petitioner has not been able to show us any legal or jurisdictional defect or error in the impugned judgment of the Tribunal that may furnish basis, ground or justification for grant of leave to appeal in the matter. Further, we also find that no question of law of public importance within the contemplation of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973 has been raised through this petition. This petition is found to be without merit and is accordingly dismissed. Leave to appeal is refused.

ISLAMABAD.

18.06.2022.

28/ Not Approved For Reporting