BEFORE THE SINDH SERVICE TRIBUNAL, KARACHI

PRESENT:
JUSTICE (R) SADIQ HUSSAIN BHATTI, CHAIRMAN
TARIQ MEHMOOD KHOSO, MEMBER
SHAHID ABDUL SALAM KHAN, MEMBER

APPEAL NO. 811 OF 2021

MUHAMMAD ASLAM
S/o. Sultan Bahadur, Muslim, adult,
Ex-Constable of Sindh Police,
Last posted at Security-II, Hassan Square,
[redacted]
Karachi.....Appellant

VERSUS

1. The Inspector General of Police
   Karachi, Sindh,

2. The Additional Inspector General of Police,
   Establishment and Training Sindh
   Karachi,

3. The Additional Inspector General of Police
   Karachi Range,
   Karachi, and

4. The Deputy Inspector General of Police
   Administration
   For Additional Inspector General of Police
   Karachi Range,
   Karachi.....Respondents

Date of hearing: 12.02.2025.
Date of Judgment: 25.02.2025

Ms. Sana Jhunjhi, advocate for the appellant.
Mr. Asif Hussain Mangi, Addl. Advocate General Sindh,
A/w DSP Juma Din, for the respondents.

JUDGMENT

JUSTICE (R) SADIQ HUSSAIN BHATTI, CHAIRMAN:

This appeal, filed under section 4 of the Sindh Service Tribunals Act, 1973, is directed against the order dated 24.05.2018, whereby major penalty of dismissal from service was imposed on the

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appellant, and order dated 30.04.2021, whereby departmental appeal filed by the appellant against order dated 24.05.2018 was dismissed by respondent No.2.

2. Brief facts of the case are that show cause notice dated 03.04.2018 was issued to the appellant on the allegation that he was involved in beat / Bhatta collection; nominated in FIR No [redacted] PS Bilal Colony; harassing innocent people of the area as well as heinous crime of patronizing social crime and influencing policing in the area. Appellant submitted his reply but the same was not found satisfactory and, therefore, final show cause notice dated 02.05.2018 was issued to him which was not replied by him. Therefore, he was awarded major penalty of dismissal from service vide final order dated 24.05.2018. He filed departmental appeal before respondent No.2, which was heard and filed by respondent No.3 vide order dated 30.04.2021. Hence the present service appeal.

3. Learned counsel for the appellant submitted that as per settled law, major penalty of dismissal from service cannot be imposed on a civil servant without conducting a regular inquiry, however, in this case regular inquiry was not conducted and major penalty of dismissal from service was imposed on him, therefore, the impugned orders are not sustainable; that the appellant was acquitted in crime FIR N [redacted] of PS Bilal Colony vide judgment dated 02.11.2018 passed by VI Judicial Magistrate, Karachi Central in Criminal Case No [redacted], however, this material fact has not been considered by the respondents; finally, the learned counsel submitted that the impugned orders are not sustainable under the law hence are liable

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to be set aside and the appellant may be reinstated in service with full back and consequential benefits.

4. On the other hand, learned AAG fully supported the impugned orders and submitted that final show cause notice dated 02.05.2018 was issued to him to which he did not submit any reply; he was also bound down to appear in the Orderly Room on 29.05.2018 and 30.05.2018, however, he deliberately avoided to attend the hearing in person. Per learned AAG an enquiry was also conducted by SDPO, New Town, East Zone, Karachi who, vide his report dated 17.05.2018, found the appellant guilty of the allegations levelled against him. He, therefore, prayed for dismissal of the instant appeal.

5. We have heard learned counsel for the appellant and learned AAG for the respondents and have also gone through the record.

6. The final order, whereby major penalty of dismissal from service was imposed on the appellant was passed by the respondent No.4 on 24.05.2018. As per averments in the memo of appeal, the appellant filed a departmental appeal, a copy whereof is available at page 21, however perusal of such appeal reveals that it carries no date. Thus, from the copy of the departmental appeal itself, it is not clear as to when this departmental appeal was filed. However, the appellate order dated 30.04.2021 reveals that the said appeal was filed on 01.03.2019 i.e. after ten months of passing of the impugned original order. As per pleadings of the appellant he filed the departmental appeal after his acquittal from criminal case bearing FIR No [redacted] [redacted]of PS Bilal Colony. If the time period lapsed between passing of the original order dated 24.05.2018 and 02.11.2018, the date of judgment of subject criminal case, is ignored or condoned, even then

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the departmental appeal filed on 01.03.2019 is time barred. Accordingly, it was dismissed by the appellate authority being barred by limitation. The appellant has not offered any explanation of the period lapsed between 02.11.2018 and 01.03.2019.

7. This appeal has been filed under section 4 of the ibid Act, which prescribes that the right to prefer an appeal to this Tribunal can be exercised subject to the fulfilment of the pre-condition that in case a departmental appeal is provided under the law, no appeal to the Tribunal shall lie unless such a remedy is availed by the aggrieved civil servant. In this case, the departmental appeal was not filed within the statutory period, it means that no departmental appeal has been filed in accordance with law. This Tribunal in the case of Raisuddin v. The Inspector General of Police, Sindh and others (1992 PLC (CS) 608) has held that if a civil servant fails to file departmental appeal in accordance with law, then he had failed to fulfil the mandatory requirement of exhausting departmental remedy before coming to the Service Tribunal and his appeal before the Tribunal would not be maintainable. Since in the instant case, the departmental appeal was not filed in accordance with law, therefore, in view of the law laid down in the above cited case, instant appeal before this Tribunal is not maintainable.

8. Learned counsel for the appellant has cited a number of cases to argue that justice at no cost and at no stage should be allowed to fall prey to procedural technicalities which may be ignored if they tend to create hurdles in the way of justice. The cited cases are of no help to the appellant for the reason that the appellant himself was unable to follow the dictate of the law by not filing a departmental appeal

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within time. It is also well settled law that the law favours the vigilant and not the indolent.

9. In the case reported as **Gulab Ali Saheto** v. **Director-General, Intelligence Bureau and others** (2002 PLC (CS) 243), cited by learned counsel for the appellant, the Hon'ble Supreme Court of Pakistan examined the facts of the case and reached a conclusion that there was no delay in filing the appeal before the Tribunal, and, accordingly set aside the impugned order/judgment passed by the Service Tribunal whereby appeal was dismissed being barred by limitation. However, the facts and circumstances of the present case are distinguishable from the case of Gulab Ali Sahito as the present appellant did not claim late communication of the original order.

10. Learned counsel for the appellant has also relied on a number of other cases but the same are not relevant for the purpose of this appeal beng distinguishable on facts and the law involved therein.

11. In view of the above discussion, this appeal is not maintainable and is, accordingly, dismissed with no order as to costs.

Pronounced in open Court.

Sd/-
(JUSTICE (R) SADIQ HUSSAIN BHATTI)
CHAIRMAN

Sd/-
TARIQ MEHMOOD KHOSO
MEMBER

Sd/-
SHAHID ABDUL SALAM KHAN
MEMBER

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