SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C. J.
Raja Saeed Akram Khan, J.

Civil Appeal No.24 of 2016
(PLA filed on 19.11.2015)

1. Accountant General, Azad Jammu & Kashmir, Muzaffarabad.
2. Secretary, Azad Jammu and Kashmir Council, Council Secretariat, F-5/2, Islamabad.
3. Deputy Secretary, Azad Jammu and Kashmir Council, Council Secretariat, F-5/2, Islamabad.
4. Joint Secretariat, Azad Jammu and Kashmir Council, Council Secretariat, F-5/2, Islamabad.
5. Selection Committee/Selection Board for promotion/Move-over of employees of Grade, B-17 in Accountant General Department through its Chairman (Joint Secretariat), Azad Jammu and Kashmir Council, Council Secretariat, F-5/2, Islamabad.

….APPELLANTS

VERSUS

Kh. Abdul Qadir, Accounts Officer, Office of Accountant General, Azad Jammu and Kashmir, Muzaffarabad.

….RESPONDENT

(On appeal from the judgment of the Service Tribunal dated 8.9.2015 in service appeal No.3 of 2004)

FOR THE APPELLANTS: Syed Nazir Hussian Shah Kazmi, Advocate.

FOR THE RESPONDENT: Sardar Karam Dad Khan, Advocate.

Date of hearing: 10.1.2017.

JUDGMENT:

Raja Saeed Akram Khan, J.— The above titled appeal by leave of the Court has been directed against the judgment passed by the Azad Jammu & Kashmir Council Service Tribunal on 8.9.2015, whereby the appeal filed by the respondent, herein, has been accepted.

2. The facts briefly stated are that the respondent, herein, filed an appeal in the Azad Jammu & Kashmir Council Service Tribunal alleging therein, that he is a permanent employee of the Audit and Accounts Department and serving in grade, (B-17). It has been alleged that the appellant-respondent, herein, applied for grant of move-over in grade, (B-18), before the Authority vide application dated

29.4.2002. The case of the appellant-respondent, herein, was placed before the concerned Selection Committee who after considering the case rejected the application vide order dated 1.4.2004. The main reason was that the appellant-respondent, herein, had been penalized as a result of disciplinary action and his one annual increment was withheld by an order dated 12.10.1999. The Selection Committee further observed that only those employees can be given benefit of move-over scale against whom no penalty under the relevant rules was imposed during the last 5 years. It was opined that the appellant-respondent will have to wait for next 4 years to obtain move-over in grade, (B-18). The appellant-respondent moved an application before the authority for reconsideration of the matter of move-over but the same was rejected vide order dated 27.4.2004. The appellant-

respondent again preferred a departmental appeal against the order dated 27.4.2004 and 1.4.2004 which was also dismissed vide order dated 25.8.2004. The learned Council Service Tribunal, after necessary proceedings, accepted the appeal filed by the appellant-respondent vide impugned judgment dated 8.9.2015, hence, this appeal by leave of the Court.

3. Syed Nazir Hussain Shah Kazmi, Advocate, the learned counsel for the appellants, argued that the judgment passed by the Council Service Tribunal is based on misreading and non-reading of the evidence, which is not sustainable in the eye of law. He argued that the Council Service Tribunal has not considered the fact that the application filed by the respondent, herein, for grant of move-over in grade, (B-18) was rejected by the concerned Selection Committee on 1.4.2004, but the order of rejection has not been challenged by the respondent at any forum. He

further contended that the respondent has filed another application before the same authority for reconsideration of his case but the same was again rejected vide order dated 27.4.2004. The respondent once again has also not challenged the said order at proper forum. The learned counsel submitted that the respondent instead of filing appeal before the Council Service Tribunal filed a representation against the orders dated 1.4.2004 and 27.4.2004, which was also rejected vide order dated 25.8.2004. He further contended that the respondent has challenged only the order dated 25.8.2004, through which his representation was dismissed, whereas, he has not challenged the orders dated 1.4.2004 and 27.4.2004, which have attained finality. The learned counsel submitted that the appeal filed by the respondent before the Council Service Tribunal was hopelessly time-barred but this aspect of the case has not taken into account in the impugned judgment.

4. On the other hand, Sardar Karam Dad Khan, Advocate, the learned counsel for the respondent, has supported the judgment passed by the Council Service Tribunal, while arguing that the same is perfect and in accordance with law, hence, cannot be disturbed. He argued that the appeal filed by the respondent before the Council Service Tribunal was well within time. He further argued that the stoppage of one annual increment is minor penalty and under law on the basis of such penalty the right of mover-over cannot be denied. He contended that if any financial benefit accrues in favour of an employee the same can be extended even after his retirement. The Council Service Tribunal has intelligently attended all the legal questions involved in the appeal and rightly came to the conclusion that the case of the appellant-respondent is fit case for grant of move-over in grade, (B-18). He contended that the appeal filed by the appellant, herein, may be dismissed.

5. We have heard the arguments of the counsel for the parties and gone through the record made available. The impugned judgment was announced on 9.9.2015 and the petition for leave to appeal has been filed before this Court on 19.11.2015, after two months and ten days. Under Order XIII, Rule (1) of the Azad Jammu & Kashmir Supreme Court Rules, 1978, a petition for leave to appeal shall be lodged in the Court within sixty days from the date of the judgment or order sought to be appealed from. A proviso has been attached to the rule that the Court may on the sufficient cause shown by the party, extend the time. The cause shown by the learned counsel for the appellants is that the appellants remained trying to obtain the sanction from the AJ&K Council Secretariat, Islamabad for filing the PLA/appeal before this Court which was accorded at a later stage, hence, the time consumed in obtaining the

sanction from the AJ&K Council Secretariat, Islamabad may be condoned. Both the counsel for the parties have not drawn the attention of this Court towards the application filed by the appellants for condonation of delay. However, during scrutiny of the record we have examined the said application which is available at page 38 of the paper-book. In ground 'B' of the said application following reasons have been given for condonation of delay:—

> "b. That for obtaining sanction for filing appeal before this Court, a letter was written to the AJK Council Secretariat Islamabad and the said sanction was granted vide letter dated 11.11.2015 which was received on 12.11.2015. The requisite copies were obtained on 13.11.2015. On 14.11.2015 the appeal was prepared which due to the Sunday on 15.11.2015 could not be filed and is being filed without any further delay on 16.11.2013, hence, the petitioners

> requested for condonation of delay of 10 days."

After going through the hereinabove referred ground of application for condonation of delay, we failed to find out any sufficient cause for the condonation of delay. We are afraid, that the ground mentioned in the application for condonation of delay cannot be termed as sufficient cause for filing the appeal beyond the prescribed period of limitation as no special treatment can be given to the Government functionaries. It is settled law that delay of each and every day has to be explained by the party seeking condonation of delay. Same like proposition came under consideration of this Court in an unreported case titled *Sain & others vs. Alam Din and others* [Civil Appeal No. 198 of 2010 decided on 12.7.2012], in which even delay of one day has not been condoned by this Court. The relevant portion of the judgment supra reads as under:—

"After going through the above said paragraph of leave granting order along with the grounds taken in the application for condonation of delay, we have failed to find out any sufficient cause for the condonation of delay. It is celebrated principle of law that delay of each and every day has to be explained. The plaintiffs-respondents have raised the objection that the petition for leave to appeal was barred by 23 days. Under Order XIII of the Azad Jammu and Kashmir Supreme Court Rules, the period of limitation for filing a petition for leave to appeal is 60 days from the date of the judgment. If the argument of the learned counsel for the defendants-appellants is taken into consideration, that the defendants-appellants came to know about the decision of the High Court on 30.6.2010, even then the petition for leave to appeal was ready on 3.7.2010 and it was signed on 4th July but it was filed by the appellants after a delay of one day for which no sufficient cause has been brought on the record. …."

6. The appellants accorded sanction for filing of the PLA/appeal before this Court from the AJ&K Council Secretariat, Islamabad on 11.11.2015. Copies of the relevant document were obtained on 13.11.2015. The memo of the appeal was prepared on 14.11.2015, even then the same has been presented before the Registrar of this Court on 19.11.2015 after four days for which no explanation has been offered. It was enjoined upon the appellants to file the PLA/appeal on the same day when the AJ&K Council Secretariat, Islamabad accorded approval on 11.11.2015, as the limitation had already been expired before the approval. The appellants failed to file PLA/appeal within the prescribed period of limitation. Similar proposition came under consideration of this Court in a case reported as *Ehtesab Bureau, Azad Jammu and Kashmir through Deputy Chief Prosecutor, Headquarter, Muzaffarabad vs.*

Ghulam Sarwar [2013 SCR 720] wherein it has been held that:—

> "5. We have heard the learned counsel for the parties and perused the record. The impugned judgment was announced on 18th July, 2011 and the PLA/appeal was filed in this Court on 19th September, 2011, after two months and one day. Under Order XXIII, Rule 2 of the Azad Jammu and Kashmir Supreme Court Rules, 1978, a petition for leave to appeal in criminal matters shall be lodged in the Court within thirty days from the date of judgment or order appealed from. A proviso has been attached to the rule that the Court may, for sufficient cause shown, extend the time. The cause shown by the Chief Prosecutor is that the appellant all along remained trying to obtain Government sanction for filing PLA in this Court which was accorded at a late stage hence the time consumed in obtaining Government sanction may be condoned. But there appears negligence on the part of the appellant.

The Government sanction was accorded vide notification No. Meem/2011/22-10114/muqadmat/qaaf dated 12.9.2011. Copies of the relevant document were obtained on 27th July, 2011. The memo of appeal was prepared and signed by the Deputy Chief Prosecutor Ehtesab Bureau on 15th September, 2011 and it was presented before the Registrar on 19th September, 2011. It was enjoined upon the appellant to file appeal on the same day when the Government accorded approval or for the sake of arguments if the notification was not received in the office of Ehtesab Bureau on the same day, then the PLA could be filed in the next day. The memo of PLA/appeal is prepared and signed by the Deputy Chief Prosecutor on 15th September, 2011. At the most the time could be condoned up to 15th September, 2011, but the appeal was not filed on 15th September, 2011, rather it was filed on 19th September, 2011. It is settled law that delay of each and every day has to be explained

> by the party who seeks condonation of delay. In a number of cases this Court has refused to condone delay of even one day.....”

It may be observed here that if the party seeks condonation it must have furnished the sufficient cause and explained the delay. The term ‘sufficient cause’ has been interpreted in a case reported as *Muhammad Habib Khan vs. Nasiri Khatoon & 11 others* [2006 SCR 22] it was observed by this Court that:—

> “……..He challenged the legality of allotment of respondents and Proprietary Rights Transfer Orders granted in their favour after the lapse of more than 13 years without furnishing any satisfactory explanation for this inordinate delay. Delay can be condoned only if some sufficient cause is furnished by the party seeking the same otherwise law expects due diligence, care and consciousness from the litigating public seeking redressal of their grievances through a legal

process. The term 'sufficient cause' is such a cause which is beyond the control of a party, therefore, the Courts have not given any premium to a party which is found negligent, indifferent and careless. The Custodian in these circumstances was justified to hold that the remedy availed before him through review petition was barred by limitation."

In another case reported as *Nazeer-ullah Shah Gardezi vs. Jammu & Kashmir Liberation Cell & 6 others* [2015 SCR 458], it has been held as under:—

"9. .....According to section 5 of Limitation Act, the delay of each and every day has to be explained. There is a chain of authorities in this regard wherein it has been held that the delay is fatal for the case of a party and if a party seeks condonation, it must have furnished the sufficient case and explained the delay....."

Similarly, in a case reported as *Sheikh Muhammad Aslam vs. Khursheed Anwar & 33 others* [2015 SCR 987], it has been held as under:—

> "5. We have heard the learned counsel for the parties and gone through the record along with the impugned judgment. From the perusal of the record it reveals that the writ petition filed by the appellant was dismissed in default on 1.4.2008 and the application for restoration of the same was filed on 19.4.2008. The grounds taken by the appellant for restoration of writ petition are that the counsel for the appellant was busy before the Supreme Court. Moreover, originally the date of hearing was fixed as 28.4.2008, which was curtailed by the High Court on the application of other party but no notice was issued to the appellant, therefore, the appellant had no knowledge about the date. Before dilating upon the merits of the case, it may be observed here that according to the relevant provision of law it is the duty of the

> party or his counsel, whose case has been dismissed for non-prosecution to show sufficient cause as to why the case was not prosecuted on the relevant date. Where the Court finds that the circumstances were beyond the control of the party or his counsel, then the same has to be considered as a sufficient cause for the restoration of the case.....”

7. From the record, it appears that the appeal before this Court has been filed beyond the prescribed period of limitation and no plausible/sufficient cause has been shown for condonation of delay. Therefore, this appeal is liable to be dismissed on this sole ground. As we are convinced that the petition for leave to appeal/appeal was filed beyond the limitation prescribed by law and no sufficient cause has been shown for this delay, therefore, the discussion on other points raised in the appeal would be a futile exercise

Resultantly, this appeal being time-barred stands dismissed with no order as to costs.

Muzaffarabad.
__.2.2017 **JUDGE** **CHIEF JUSTICE**

Date of announcement: 23.02.2017