

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUHAMMAD ALI MAZHAR
MRS. JUSTICE AYESHA A. MALIK

CIVIL PETITION NO.469-L OF 2023

Against the judgment dated 27.07.2022 passed
by the Punjab Service Tribunal, Lahore in Appeal
No.564/2021

Regional Police Officer, Dera Ghazi Khan Region, etc. ...Petitioners

VERSUS

Riaz Hussain Bukhari ...Respondent

For the Petitioner: Barrister Muhammad Mumtaz Ali, Addl. AG,
Punjab

For Respondents: Dil Muhammad Khan Alizai, ASC

Date of Hearing: 14.09.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the Order dated 27.07.2022 passed by the Punjab Service Tribunal, Lahore ("**Tribunal**") in Appeal No.564/2021 whereby the appeal filed by the present respondent was allowed.

2. The transitory facts of the case are that the respondent approached the learned Tribunal with the prayer that the order dated 30.10.2016 and final order dated 20.11.2020 may be set aside and the promotional benefits granted to him in the rank of Sub Inspector of Police may be restored. The learned Tribunal held that the confirmation of the instant respondent as Sub-Inspector was wrongly considered out of turn, and directions were issued to enlist the respondent/appellant in the seniority list of Sub-Inspectors of Police with effect from the date of his confirmation as 05.08.1987 with consequential benefits. Being aggrieved and dissatisfied, the petitioner has challenged the judgment passed by the Tribunal.

3. The learned Additional Advocate General, Punjab ("**Addl. AG**"), argued that this Civil Petition is barred by 31 days, therefore the petitioners have also filed C.M.A No. 469 of 2023 under Order XIII, Rule 1, read with Order XXXIII, Rule 6 of the Supreme Court Rules, 1980 ("**SC Rules**"), for condonation of delay. He argued that the Superior Courts have always leaned towards the adjudication of matters on the

touchstone of merits, rather than knocking out the litigants on the basis of technicalities. So far as the reason for the delay in filing the present Civil Petition within the stipulated time is concerned, he averred that a lengthy procedure and requirements were to be fulfilled and followed and the delay was neither intentional nor deliberate, but due to circumstances beyond control. It was further contended that even if a delay is caused it may be condoned as the petitioner in the present case is the Government and the conduct of lower functionaries in an appropriate case can be taken as a good ground for condonation of delay. He further argued that the petitioners have an arguable case, and if the delay is not condoned they will suffer irreparable loss and injury. In support of his contention, the learned Addl. AG relied on the dicta laid down in the cases of Managing Director, Sui Southern Gas Company Ltd. Karachi v. Ghulam Abbas and others (PLD 2003 SC 724); Government of Balochistan through Secretary Board of Revenue, Balochistan Quetta and others v. Muhammad Ali and 11 others (2007 SCMR 1574); Muhammad Bashir and another v. Province of Punjab through Collector of District Gujrat and others (2003 SCMR 83); and Deputy Collector of Customs and 2 others v. Muhammad Tahir and another (PLD 1989 SC 627).

4. The learned counsel for the respondent argued that no satisfactory reason has been shown in the application for condonation. He further argued that delay due to non-completion of departmental formalities within the prescribed period of limitation cannot be considered a good ground for condonation.

5. Heard the arguments. A survey of the application moved under Order XIII, Rule 1, read with Order XXXIII, Rule 6 of the SC Rules for condonation of delay reveals that the petitioner has taken a general ground that 'it is well entrenched principle of administration of justice that the Superior Courts have always been leaning towards the adjudication of matters on the touchstone of merits, instead of knocking the litigants out on the basis of technicalities', but the essential ground for condonation has been entreated on account of lengthy procedure and requirements that were to be followed and fulfilled, hence according to the petitioner the delay was neither intentional nor deliberate and it may be condoned as the Government is the petitioner before this Court.

6. It has been noted that oftentimes cases concerning the Federal and Provincial Governments and autonomous bodies are instituted after the lapse of the period of limitation postulated by the law and the plea taken for condoning the delay is invariably and inevitably that the time was spent in fulfilling inter-departmental procedures and seeking final instructions from the competent authority. Even private sector/organizations have begun to take a similar plea, with delays being attributed to Board Resolutions, non-availability of the concerned head or officer, delay in the law department etc., despite the aforesaid entities having full-fledged legal departments and internal law officers. Seemingly, applications for condonation of delay are being filed as a routine matter while adopting a callous approach which fails to recognize that the delay cannot be condoned without the presence of sufficient cause or explaining the delay of each and every day. The mechanical and unpersuasive justification of administrative delays has almost become a trend which is consistently pleaded for condonation of delay through stereotypical and generalized applications, which in our point of view cannot be considered 'sufficient cause' or a reasonable ground in every case. On the contrary, it illustrates the recklessness and inefficiency of the concerned department in deciding whether they want to challenge the decision in the appellate jurisdiction of this Court or not. In the case of an individual, all decisions rest solely on him with regard to the procurement of advice for challenging the decision at higher forum; the decision to challenge; the engagement of an advocate; supplying the relevant documents to the advocate for the preparation of the appeal/petition and then following the case religiously; however, in the case of the Government or any of its departments, the party has at its disposal the assistance of its own legal department; the help and support of the Attorney General's Office, or the Advocate General's Office as the case may be. Therefore, immediately upon receiving a copy of the judgment/order, the Government departments may move for instructions rather than waiting for the lapse of the period of limitation provided for approaching the higher Courts. At times this cavalier attitude and approach smears and smacks *mala fide* and leads to the belief that the appeal is intentionally being presented belatedly only as a formality in order to provide an undue advantage to the other side, rather than due to any genuine intent to challenge the judgment or order. Nothing has been articulated in the application moved for condonation of delay to ascertain where the delay was actually caused; when legal advice was received or sought; when the matter was referred

to the competent authority or person in charge for the necessary instructions; who was responsible for the delay; and what punitive or disciplinary action was taken against the person who was instrumental in causing the delay. On the face of it, this petition is barred by 31 days but no plausible or satisfactory explanation has been propounded by the petitioner for the delay of each and every day; except a sweeping statement that the time was consumed in the lengthy procedure and formalities, which in our view could have been followed and completed with due diligence within the period of limitation.

7. It is also a well settled exposition of law that while considering the grounds for condonation of delay, whether rational or irrational, no extraordinary clemency or compassion and/or preferential treatment may be accorded to the Government department, autonomous bodies or private sector/organizations, rather their case should be dealt with uniformly and in the same manner as cases of ordinary litigants and citizens. No doubt the law favours adjudication on merits, but simultaneously one should not close their eyes or oversee another aspect of great consequence, namely that the law helps the vigilant and not the indolent. At this juncture, it is quite relevant to quote a Latin maxim "*Leges vigilantibus non dormientibus subserviunt*" or "*Vigilantibus Non Dormientibus Jura Subveniunt*" which articulates that the law aids and assists those who are vigilant but not those who are sleeping or slumbering. Delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied. The doctrine of equality before law demands that all litigants, including the State, are accorded the same treatment and the law is administered in an even-handed manner.

8. The astuteness of the law of limitation does not confer a right but ensues incapacitation after the lapse of the period allowed for enforcing some existing legal rights and it foresees the culmination of claims which have decayed by efflux of time. Under Section 3 of the Limitation Act, 1908 it is the inherent duty of the Court to delve into the question of limitation, regardless of whether it is raised or not. Carelessness, intentional or obvious sluggishness, or dearth of *bona fide* are no reason for condonation of delay. The following are some judicial precedents in which the question of limitation and the litmus test for conceding the grounds for condonation of delay have been dealt with *in extenso*:

1. M/s SKB-KNK Joint Venture Contractors thr. Regional Director v. Water & Power Development Authority (WAPDA) and others (2022 SCMR 1615). This Court held that the government departments are also treated like an ordinary party before the Court and the same treatment has to be given to the government department as is given to the ordinary litigants.

2. Food Department, Gujranwala thr. Deputy Director and others v. Ghulam Farid Awan (2010 SCMR 1899). It was held by this Court that a number of cases filed by the government agencies are time-barred. It is possible that such petitions are filed either to oblige the litigants or to conceal the illegality, inaction and negligence of the officers/authorities concerned. The burden of decision is thus shifted on the Court system. Such maneuver can neither be appreciated nor approved. It is well-settled that government functionaries are equal before the Courts. No preferential treatment can be shown to the Government/or its agencies.

3. Khuda Bakhsh and others v. Muzaffar thr. L.Rs. and others (2007 SCMR 1032). The Court observed that the explanation offered for condonation of the inordinate delay was the usual excuse of lethargy in various offices/departments of the petitioner-Government which has never been considered a sufficient ground for the purpose, hence the petitions were dismissed as being barred by time.

4. Government of Pakistan thr. Ministry of Works and another v. M/s Malbrow Builders, Contractor, Sialkot (2006 SCMR 1248). It was held that question of limitation being not merely a technicality cannot be taken lightly and the rights accrued to the other party due to limitation cannot be snatched away without sufficient cause and lawful justification which are lacking in this case. We are conscious of the fact that sufficient cause is not capable of connotation with exactitude and would differ from case to case but laxity, carelessness and cursory approach of the functionaries of the Government do not constitute sufficient cause and hence the question of any indulgence does not arise. The delinquent officers/officials who are responsible for such delay must be taken to task being responsible for the loss of public exchequer. No preferential treatment can be shown to the Government as held on various occasions by this Court.

5. Province of Punjab v. Sh. M. Riaz Shahid (2005 SCMR 1435). This Court reiterated the principle laid down in the case of Central Board of Revenue v. Messrs.' Raja Enterprises, etc. (1998 SCMR 307) that so far as the limitation is concerned, the Government cannot be treated differently from an ordinary litigant. If in spite of having enormous sources and facilities, the Government continues to delay the filing of cases in time detrimental to its own interest, the opposite party cannot be penalized for its negligence.

6. Province of Punjab thr. Secretary Education v. Kishwar Qudus Paul (2004 SCMR 571). This Court has time and again held that delay taking place in the Government offices in the process of filing petitions could not be said to be sufficient cause for condoning the delay. In the instant case there is delay of fourteen days in filing the petition for leave to appeal and each day's delay has not been satisfactorily accounted for. It was bounden duty of the petitioner to have pursued the matter for the purpose of filing the petition as soon as the judgment was passed on 09.08.2002. The petitioner cannot be allowed to place blame upon his subordinate officers who though were also equally responsible to expedite the process of filing the petition within time. It must be noted that delay in filing petition has created vested right in favour of respondent which cannot be lightly ignored unless strong case is made out showing sufficient cause accounting each day's delay. But in the instant case no sufficient cause has been shown for condonation or delay of fourteen days therefore, this petition is dismissed as time barred.

7. Chief Secretary, Government of Sindh, Karachi and another v. Muhammad Rafique Siddiqui (2004 PLC (C.S.) 962). The case was time-barred by 38 days. The condonation of delay is sought on the ground that instructions from the concerned authority for filing appeal were not received in time and for that reason the petition could not be

filed within time. It is settled law that on question of limitation the Government could not be treated differently from ordinary litigant. Completion of formalities is not a sufficient ground for condoning such delay.

8. Chairman/Secretary, Pakistan Railways, Ministry of Railways, Government of Pakistan, Islamabad and others v. Muhammad Sharif Javaid Warsi (PLD 2003 SC 6). The Court while considering various dictums in respect of time barred cases and grounds raised for condonation, held that no preferential treatment will be offered to Government Department qua the civil litigant, therefore the ground cited for condonation of delay was not found sufficient and the petition was dismissed being barred by time.

9. Chairman, District Evacuee Trust, Jhelum v. Abdul Khalig thr. L.Rs. and others (PLD 2002 SC 436). The Court observed that a number of times the cases pertaining to Federal/Provincial Government or autonomous bodies instituted beyond limitation prescribed by law before subordinate Court, High Court and this Court without assigning any justification acceptable under the law for not approaching the Court within time and in the applications seeking condonation of delay, if filed, invariably the plea is taken that time has been spent in completion of departmental proceedings, therefore, delay may be condoned. The concerned department must know that delay of limitation in filing of proceedings can only be condoned if it is sought for on sufficient grounds otherwise in absence thereof no special indulgence can be shown to such department because it is well-settled that no preferential treatment can be offered to the Government department or autonomous bodies. Their cases have to be dealt with same manner as the cases of an ordinary litigant/citizen.

9. While reinforcing the plea of condonation for delay the learned Addl. AG cited the case of Managing Director, Sui Southern Gas Company Ltd. Karachi v. Ghulam Abbas and others (PLD 2003 SC 724). No doubt in this case this Court held that the decision of the cases on merits have always been encouraged instead of non-suiting litigants for technical reasons, including limitation. So far as the question of limitation is concerned it was further held that it may be considered sympathetically after taking into consideration the relevant facts which means that condonation may be accorded keeping in mind the relevant facts which may show some reasonable grounds which are missing in this case. He next referred to the case of Government of Balochistan through Secretary Board of Revenue, Balochistan Quetta and others v. Muhammad Ali and 11 others (2007 SCMR 1574). In this case, the question of public importance was the prime consideration. The Government and the Forest Department were deprived of the public property meant to be used, utilized, and dealt with in the public interest, which is not the case here. He further relied on the case of Muhammad Bashir and another v. Province of Punjab through Collector of District Gujrat and others (2003 SCMR 83), where this Court held that it is a matter of common knowledge that, in our social, economic and cultural set-up, Government Departments and public functionaries generally pay little heed to the public interest. The aforesaid judgment

depicts that the matter was remanded to the Trial Court, after condoning delay in the public interest rather than any other consideration. In the end, the learned Addl. AG cited the case of Deputy Collector of Customs and 2 others v. Muhammad Tahir and another (PLD 1989 SC 627), where this Court held that in matters involving Government interest or public interest, the petitioners no doubt would be treated at par with ordinary citizen; but they would be given the same concessions and considerations as given to the other citizens. It was further held that while examining the merits of application for condonation of delay the Court can look into the conduct of the subordinate functionaries, on whose conduct the higher policy-maker functionaries have only a remote physical control. In this case, some of the lower functionaries, as explained in the application, seem to have misconducted in the matter of vigilance and preparation for filing the petition for leave to appeal departmental action was taken against them in this behalf, therefore the delay was considered *bona fide* and condoned. Nothing is mentioned in the application for condonation filed in the case in hand to explain who was instrumental in the delay and what departmental action was taken against the person found responsible for the delay of 31 days.

10. At this juncture, we would like point out the judgment rendered by this Court in the case of Chairman/Secretary, Pakistan Railways, Ministry of Railways, Government of Pakistan, Islamabad and others v. Muhammad Sharif Javaid Warsi (PLD 2003 SC 6). According to the minutiae of the case, the petition was barred by 21 days. Condonation of delay was sought on the ground that the Pakistan Railways is a Government Organization, the impugned judgment was received in the Law Branch on 12.3.2001 and the appeal was filed on 13.3.2001 without any delay. It was further pleaded in the application that the delay in filing the petition was not intentional or deliberate but due to the fact that the impugned judgment was received in the concerned office (i.e. Law Branch) after some delay. The judgment reflects that this Court had called upon the counsel for the petitioner to justify whether this Court has ever shown indulgence on the basis of the ground taken in the application for condonation of delay, because it is well-settled that no preferential treatment will be offered to Government Department *qua* the civil litigant. This Court further noted that in the cases filed on behalf of the Federal and Provincial Governments, the departments file proceedings in Courts after the period of limitation without seeking

condonation of delay on sustainable legal grounds, except by stating that the time was consumed in completing departmental formalities. In order to stop this malady, this Court felt it appropriate to constitute a Committee as under to suggest ways and means while remaining within the four corners of the existing laws and submitted recommendations. The Committee in the aforesaid case comprised the following members:

1.	Attorney-General of Pakistan	Chairman
2.	Law Secretaries of all the Provinces	Members
3.	Solicitors of all the Provinces	Members
4.	Advocates-General of all Provinces	Members
5.	Any other representative of the Government Department, Autonomous Bodies including Railways, WAPDA, etc.	Members

11. In pursuance of the directions contained in the aforesaid judgment of this Court, the Committee submitted a report containing recommendations which were approved by this Court and subsequently circulated to all those concerned at the Federal and Provincial level. The manuscript of the report and the approved recommendations are reported in **PLD 2003 Journal 95**, which underlines and accentuates the following Standard Operating Procedure (“SOP”) as under:-

“DELAY IN FILING OF APPEALS BY THE VARIOUS DEPARTMENTS OF THE GOVERNMENT

Report of the Attorney-General for Pakistan containing recommendations on the subject duly approved by the Supreme Court of Pakistan

[No.F.5(2)/2003-AGP, dated 27-5-2003]

Subject: Civil Petition No.775 of 2001. The Chairman/Secretary, Pakistan Railways, Ministry of Railways, Government of Pakistan, Islamabad and others PLD 2003 SC 6.

It has been noticed that appeals in superior Courts by the Government are usually filed after expiry of the period of limitation. One such matter came up before the Supreme Court in Civil Petition No.775 of 2001, Chairman/Secretary (Pakistan Railways v. Muhammad Sharif Javaid Warsi). The Honorable Court took serious note of the situation and has rendered an elaborated judgment dated 16-10-2002 reported in PLD 2003 SC 6.

2. In pursuance of the directions of the Apex Court contained in para.4 of its judgment dated 16-10-2002, the Committee headed by the Attorney-General for Pakistan held detail deliberations wherein representative of the Establishment Division, Advocate-Generals of the Provinces and of other departments participated. The Attorney-General for Pakistan submitted a report. The recommendations in this report which were approved by the Honorable Supreme Court and have already been circulated to all concerned at the Federal and Provincial level.

RECOMMENDATIONS

The Hon'ble Supreme Court of Pakistan has taken a serious note of the delays in filing appeals by the various departments of Government. The Attorney-General for Pakistan, in compliance with

the directions of the Hon'ble Supreme Court of Pakistan and after consultation with the various Departments and Ministries submitted a report to the Hon'ble Supreme Court of Pakistan.

The following recommendations which formed a part of that report are being circulated to all concerned, on the directions of the Hon'ble Supreme Court of Pakistan, alongwith a copy of the judgment in Civil Petition No.775 of 2001, for strict compliance:

CERTIFIED COPIES

1.0 In every case the counsel must apply for certified copies on the date when arguments are concluded in the matter.

1.1 A receipt of the application must be obtained to eliminate delays.

1.2 The clerk/officer of the Court in charge of issuing certified copies must issue--

(i) a numbered receipt,

(ii) stating the date of the application,

(iii) the number of the case,

(iv) the number of the miscellaneous application (wherever required).

(v) the list of documents of which the certified copy is applied for.

(vi) the date on which the copy will be made ready and available.

1.3 In any case where the copy is not made ready on the date specified in the receipt the matter must be brought to the attention of the Register/AR concerned, of the Court. The Registrar/AR must also in writing communicate to the counsel for the applicant the date on which the copy will be made ready and available.

FUNDS

2.0 The Ministry of Law both at the Federal and Provincial level must allocate funds to the Deputy Attorneys-General/Standing Counsel and the Advocate-General(s) as the case may be to meet the expenses for photocopies, certified copies and other Court expenses.

2.1 A sum of Rs.20,000.00 must be immediately allocated for every seat of the High Court.

2.2 In the case of the Federal Government the senior most Deputy Attorney-General/Standing Counsel and in the case of Provincial Government the Advocate-General should be given control of these funds:

(i) he should be made the DDO for this fund.

(ii) He should also be the Sanctioning Authority for the utilization of this amount.

2.3 The amount should be utilized only to meet Court expenses and expenses for photocopies and certified copies of Court records, pleadings and judgments.

2.4 A monthly statement should be submitted to the Ministry of Law giving the details of the expenditure. On receipt and verification of the statement the Ministry of Law should top up the fund by the amount expended. The verification must in no case take more than 7 days.

COMMUNICATIONS AND DECISIONS

3.0 The lawyer conducting the case must immediately on the announcement of judgment and again within 24 hours of obtaining the certified copy inform the administrative ministry as well as the Ministry of Law about the decision. Information about an adverse order must be communicated in writing.

3.1 He must simultaneously send a copy of the decision to the two Ministries with a written opinion clearly stating whether an appeal ought to be filed.

4.0 The administrative ministry on receipt of a copy of the order must immediately and within 3 working days inform the Ministry of Law that in view of the facts of the case whether it is in favour of an appeal or not.

4.1 In all cases where the time remaining for filing an appeal is 7 days or less an officer of the administrative ministry, not below the rank of Deputy Secretary, must personally take the file to the Ministry of Law.

4.2 The Ministry of Law must state its opinion and take decision in all matters within 3 working days except when the time for filing appeal is 7 days or less in which case the opinion/decision must be recorded/made within 24 hours.

EXPLAIN DELAY

5.0 In all cases where the appeal is barred by time the administrative ministry must, in writing, communicate to the Ministry of Law/Law Officer responsible for filing the appeal, the reasons for the delay. The delay of each day must be cogently explained. Reasons like time is consumed in moving the file from one desk to another, or that the matter escaped attention or that the approval of the competent authority took time etc., have been consistently rejected by the Supreme Court. Such reasons must not be advanced.

5.1 Every petition/appeal which is barred by time must be accompanied by a certificate of the ASC/AOR responsible for the petition/appeal that he has examined the application for the condonation of delay in the light of the pronouncements of the Supreme Court and is of the view that the delay of each day has been cogently explained and that it is a fit case for the condonation of appeal.

5.2 The application for condonation of delay must also identify the member(s) of the staff and/or officer(s) responsible for the delay. Their name, designation and address must be stated in the application. The application must also clearly state the disciplinary proceedings initiated against the person(s) concerned and the stage of the proceedings. It must also specify the steps taken by the department to assess the Revenue loss caused by the delay in filing the appeal and the steps taken to recover it from the delinquent officer.

5.3 The ASC/AOR responsible for the petition/appeal must certify that he has examined the application for condonation of delay and contains the name and particulars of the person responsible for the delay and the details of the actions initiated against him. [Emphasis supplied]

COSTS

5.6 The rejection of the application for condonation of delay by the Supreme Court should personally expose the counsel concerned to a cost of Rs.10,000.

LEGAL OFFICERS

6.0 In every administrative ministry at least one person not below the rank of Deputy Secretary must be identified by name to act as the officer incharge of legal matters for the Ministry.

6.1 The duties of such Deputy Secretary should include but may not be limited to:

- (i) Monitoring of cases.
- (ii) Keeping in touch with the Law Officer(s) concerned.
- (iii) Liaison with the Ministry of Law.
- (iv) Giving reasons in writing for the delays in filing appeals.
- (v) Briefing counsel for the filing appeals.

6.2 The Deputy Secretary or an Officer not below Grade-17 duly nominated by him must attend Court proceedings whenever counsel so desire.

6.3 The Deputy Secretary must be held personally responsible for any delay in filing of appeals.

PARTIES

7.0 The Registrar/Officers responsible of all Courts must return all such service matters/appeals where the Establishment Division has been made a party although the employee (in B-19 or below) is not an employee of that Ministry. In all such cases the administrative Ministry/Department concerned should only be impleaded as party.

CONCESSIONS

8.0 The Law Officers must not make any statement conceding an issue or a case in Court unless they have been duly instructed in writing by the Competent Authority and an officer not below Grade-17 is present in Court to verify and reiterate such instructions. In all such cases the presence of the officer must be recorded in the order of the Court and the written instructions made a part of the record of the Court".

12. Despite this meticulous, comprehensive and all-encompassing SOP which was circulated to all concerned, the austere observance and compliance seems to have been utterly disregarded and still the applications for condonation of delay are being filed in perfunctory manner and not in conformity with this SOP. In this case too, the petitioners have skipped the necessary details including the identity of persons who became instruments of delay, deliberately or indeliberately, or whether any disciplinary action was taken against the person(s) responsible for the delay. All such details should have been jotted down in the application for condonation of delay for consideration which are missing and due to dearth of such nitty-gritties, it cannot be determined whether the case is fit for condonation of delay in view of the guiding principles cogitated in the SOP which is very much in field and should have been implemented in letter and spirit for seeking condonation of delay on sufficient cause.

13. As a result of the above discussion, the application for condonation of delay is dismissed and, as a consequence thereof, the Civil Petition is also dismissed. Office is directed to transmit a copy of this judgment to the Office of the Attorney General of Pakistan, Advocates General of all the Provinces, including Islamabad Capital Territory, as well as the Federal and Provincial Law Secretaries for information and compliance.

Judge

Judge