

**THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT**

Before:

1. Mr. Justice, Syed Arshad Hussain Shah, CJ
2. Mr. Justice, Wazir Shakil Ahmed, Judge

Civil Misc. No. 181/2019

In

Civil Misc. No. 09/2019

In

CPLA, U/O No. 02/2019

Dardmand Shah s/o Ameer Shah, Ex-Levy Assistant Commissioner
Office Punial Ishkoman, r/o Ishkoman Khas, District Ghizer.

Petitioner

Versus

1. Provincial Government through CS GB, Gilgit
2. Secretary Home & Prison GB, Gilgit
3. Secretary Services GB, Gilgit
4. Deputy Commissioner Ghizer
5. Assistant Commissioner Punial Ghizer
6. AGPR District Accounts Officer Ghizer

Respondents

PRESENT

1. The Advocate General Gilgit-Baltistan for the respondents
2. Raja Shakil Ahmed Advocate, for the Petitioner
3. Mr. Ali Nazar Khan, AOR

Date of Hearing : 09.09.2020

JUDGMENT

Wazir Shakil Ahmed, Judge.....The above tilted CPLA has been filed by the petitioner named above, being aggrieved by the Judgment/ Order dated 28.06.2018 of the Gilgit-Baltistan Service Tribunal passed in service appeal No. 656/2016, whereby, the service appeal of the petitioner was dismissed.

2. The brief and admitted facts of the case are summarized as under:

3. That the petitioner was an employee in Tehsil Office Ishakomen Ghizer, who was duly appointed as Levy (BS-1) in the Tehsil Office Ishkomen, after carrying out necessary codal formalities. Vide office order dated 22.06.2002, it is further mentioned that service of the petitioner was to be governed by the government servants (Appointment, promotion and transfer) Rules, 1973. It was in the year 2015, when the answering respondents Nos. 4 & 5 for the first time noticed absence of the petitioner from his duty and found him inefficient in performing the said duties, and the respondent No. 4/the Deputy Commissioner Ghizer, vide Office Order No. Esst-01(3)/2015, 5099/5102, dated 02.11.2015, got initiated an inquiry against the petitioner alleging that the petitioner has demonstrated misconduct and disobedience in performing his duties. Vide Office Order dated 02.11.2015, it is further alleged that despite several warnings, the petitioner continued showing irregular behaviors and observed gross negligence by remaining absent from duty off and on, and a result of which the salary of the petitioner was duly stopped with immediate effect and until further orders and the respondent No. 5/ the Assistant Commissioner Punial/ Ishkomen was appointed as Inquiry Officer, under the Gilgit-Baltistan Civil Servants (Efficiency &

Discipline) Rules, 2011, who was to submit his finding and recommendation within 15 days.

4. The case file is attached with yet another Office Order No. Estt-01(85)/435-41 dated 27.01.2016, whereby, the respondent No. 4/ the Deputy Commissioner Ghizer, in the light of the finding of the Inquiry Officer/the present respondent No. 5, dismissed the petitioner from government service with immediate effect.

5. The petitioner filed an appeal before the Secretary Home Gilgit-Baltistan on 22.02.2016, who vide a letter dated 04.10.2016, addressed to the respondent No.4/the Deputy Commissioner Ghizer, conveyed the dismissal of the appeal of the petitioner by the competent authority being meritless, which culminated into filing of an appeal before the learned Service Tribunal Gilgit-Baltistan.

6. To the utmost dissatisfaction of the petitioner, the said appeal was also met with the same fate and was accordingly dismissed vide impugned judgment/order of Service Tribunal dated 28.06.2018, hence, this petition for leave to appeal.

7. We have heard the learned counsel for the parties at length and also gone through the record of the case with their able assistance, while doing so, we have painfully observed that the learned bench of the Service Tribunal Gilgit-Baltistan,

through their concluding para No. 4 of the impugned Judgment have unnecessarily indulged themselves regarding filing of the departmental appeal by the present petitioner on 22.02.2016, and found the same to be directly addressed to the Home Secretary Gilgit-Baltistan not through proper channel by holding that a proper departmental appeal through proper channel, which is pre requisite for exercise of jurisdiction, which was found lacking in the said matter. *The bench vide impugned judgment/order further held that:*

***“As to the question of limitation if the appeal annexed with the instant appeal is considered, that date of dismissal of same is 04.10.2016 against which instant appeal has been preferred before this Tribunal on 24.11.2016 after lapse of 01 month and 20 days, hence the instant appeal is time barred.*”**

Furthermore, on merits the impugned judgment/order further held in just a half of paragraph as under:

***“As far as the claim of the appellant that the dismissal order is against law, facts and rule is concerned, the record shows that a proper inquiry has been conducted by the competent authority as per law/rules and adapting relevant procedure and*”**

seems no irregularity or illegality is committed by the Inquiry Officer in conducting inquiry.

In view of the above, we hold that the instant appeal is liable to be dismissed. Appeal stands dismissed. File be consigned to record after completion.”

8. As discussed above, major charges against the petitioner was that of demonstration of misconduct and disobedience in performance of duties regarding which the respondent No.4 has entrusted an inquiry against the petitioner to respondent No. 5, who was to probe the said allegations under the Gilgit-Baltistan Civil Servants (Efficiency & Discipline) Rules, 2011, but to the contrary following two vague charges were framed against the petitioner:

(a) He remains habitually absent from Govt. duty and has ceased to efficient in performance of duty.

(b) He is engaged in private job and working as sales agent in State Life Insurance Corporation.

9. It is clear that the above two charges were altogether different, which were regarding commission of misconduct and disobedience in performance of duties as alleged in the office order dated 02.11.2015, which was in fact the subject matter of the inquiry got initiated by the respondent No. 4.

10. The record of the case is altogether silent about habitual absence of the petitioner, which has amply discussed in the preceding paras, but on ground it was just an absence of 20 days and that was also due to the road accident of the petitioner during which the right leg of the petitioner was fractured and thereafter was supported with a steel rod by carrying out surgery and the petitioner was further advised medical rest for 20 days from 09.11.2015 to 28.11.2015.

11. From the plain perusal of the record, the answering respondents did not acknowledge the bed rest issued in his favor and got initiated an inquiry on the basis of misconduct and willful disobedience etc.

12. Another painful aspect of the above sorry state of affair is that the petitioner in the result of the above order of dismissal from service that also on the basis of absence of 20 days from duty went on such a mental agony, which resulted into open heart surgery and the petitioner was further to face throat cancer of his teenage girl, the undeniable proof of the same is attached with the case file.

13. Now coming back on the point of limitation, as has mentioned in the judgment/order of the learned Service Tribunal Gilgit-Baltistan, it is regretfully noticed that the 03 member bench has miscalculated the period of limitation, which is crystal clear on the face of the record. The date of dismissal of the appeal

passed by the competent authority as shown by the impugned judgment is 04.10.2016, against which the appeal before the Service Tribunal Gilgit-Baltistan, has shown to be preferred on 24.11.2016, but, the Service Tribunal has wrongly shown the same as time barred stating that the appeal has been filed (after lapse of 01 month and 20 days), in fact it was just 21 days, that also, if the date is reckoned with the passing of dismissal order of appeal i.e. 04.10.2016, which is not the case at all as per Section 15 of the Gilgit-Baltistan Civil Servants (Efficiency & Discipline) Rules, 2011.

Sec. 15 (Any civil servant on whom a penalty has been imposed under these rules, except where the penalty has been imposed by the Government, may within 30 days from the date of the communication of the order, appeal to such authority as may be prescribed:

Provided that, if the appellate authority is dissatisfied that there is sufficient ground for extending the time it may entertain the appeal at any time.)

14. It is clear from the provision of above Section that the time of 30 days shall be reckoned not from the date of order but from the date of communication of the order to the petitioner.

15. In the light of above hard fact, it is crystal clear that the learned Service Tribunal has failed to apply their judicious mind to the law and also the facts involved in the case in hand and the findings arrived at warrants interference and by doing so, we, convert this petition into an appeal and the same is allowed, consequently, the impugned judgment/order dated 28.06.2018 passed by the learned Service Tribunal Gilgit-Baltistan, is set aside and direct the reinstatement of the petitioner in his service from the date of dismissal with all back benefits.

Announced
09.09.2020

Chief Judge

Judge

Whether the case is fit for reporting **(Yes / No)**