BEFORE THE SINDH SUBORDINATE JUDICARY SERVICE TRIBUNAL (HIGH COURT OF SINDH AT KARACHI)

Present:

Mr. Justice Agha Faisal
Mr. Justice Dr. Shah Nawaz Memon

Service Appeal No. 13 of 2016

Ashraf Yar Khan …… Appellant

Versus

High Court of Sindh, through Registrar …… Respondent

Date of hearing: 02.11.2026
Date of decision: 16.11.2026

Appellant: through Messrs. Salahuddin Ahmed, Sadat Yar Khan and Neha Makhdoom, Advocates.
Respondent: through Mr. Irshad Ahmed Shaikh, A.A.G.

ORDER ON C.M.A. NO. 10 OF 2017 AND THE APPEAL

DR. SHAH NAWAZ MEMON, J.: — This appeal under section 4 of the Sindh Service Tribunals Act, 1973 (the Act) is directed against the order of 09.04.2016, by which the Hon'ble Chief Justice, acting as Authority, imposed on the appellant, then a Senior Civil Judge, the major penalty of compulsory retirement under Rule 4(1)(b)(ii) of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 (the Rules). The appeal was presented after the period allowed by the Act and is accompanied by C.M.A. No. 10/2017, an application for condonation of delay under section 5 of the Limitation Act, 1908, which section 6-A of the Act applies to appeals before the Tribunal. By order of 03.06.2023 the Tribunal required learned counsel to address limitation first. This order is confined to that question. It expresses no view on the merits of the charge or of the order impugned.

I. FACTS AND DATES

2. The impugned order records that the appellant was absent from duty from 01.07.2014 to 22.11.2015, that medical leave of 32 days had been granted, and that the remaining absence was without sanction. It is dated 09.04.2016. On 09.05.2016, the thirtieth day, the appellant applied to the Authority for review of the order, as the proviso to rule 10(1) of the Rules allows, an order of the Chief Justice not being appealable but open to review. The review was not decided, and no order on it has been communicated to him.

3. The appeal was presented on 27.09.2016. It is brought in the name of the appellant "through attorney", Mr. Imran Ali Khan, who verified the memorandum and affirmed the supporting affidavit. The power of attorney, which the index of the file dates 09.06.2016, is on the record. It authorises the attorney to represent the appellant in any service appeal before a Service Tribunal, to sign, file and verify such appeals and applications, and to appoint barristers, advocates, pleaders or sub-attorneys. A vakalatnama accepted on the same date by a firm of advocates, through the same attorney, is also on the record, and the memorandum of appeal was drafted by an advocate of that firm.

4. The office raised objections on presentation, the first being that no application for condonation accompanied the appeal. On 12.11.2016 learned counsel sought a week to comply, and time was allowed. C.M.A. No. 10/2017 is dated 03.01.2017 and is supported by an affidavit of the attorney alone. There is no affidavit of the appellant. C.M.A. No. 9/2017, dated 24.01.2017, seeks exemption from filing original documents, so the annexures to the condonation application are photocopies.

5. The dates, the periods that follow from them, and what C.M.A. No. 10/2017 says about each, are set out in the table below.

Serial No.	Description	Date	Remarks
1	Impugned order passed by the Chief Justice	09.04.2016 (Sat)	Day 0. Thirty days to apply for review under the proviso to rule 10(1), counted from the day after communication.
2	Last day for the review application	09.05.2016 (Mon)	The thirtieth day after the order.
3	Review application actually filed	09.05.2016 (Mon)	Filed on the thirtieth day.
4	Ticket issued, Karachi to Toronto, outward leg only	03.06.2016 (Fri)	Annexure “A”, page 341. The appellant was in Pakistan on this date. Application: he went to Toronto for two months for his wife’s treatment.
5	Summer vacation of the Court	06.06.2016 to 06.08.2016	62 days, all inside the ninety-day wait. Petitions were received daily. Court re-opened Monday, 08.08.2016. Application: the vacation is to be excluded.
6	Power of attorney and vakalatnama	09.06.2016	Date as in the index of the file and the vakalatnama; the day is blank in the power of attorney. Mr. Imran Ali Khan authorised to sign, file and verify service appeals and to appoint advocates and sub-attorneys.
7	Flight date, Karachi to Toronto	12.06.2016 (Sun)	As per the ticket.
8	End of the ninety days to wait for a decision on the review	07.08.2016 (Sun)	Ninety days from 09.05.2016. No appeal lies before this (clause (a) of the proviso to section 4). Court closed, Sunday.
9	Thirty days to file the appeal begin	08.08.2016 (Mon)	First day of the thirty days, and the first day on which an appeal could lie.
10	Last day to file the appeal	06.09.2016 (Tue)	Thirtieth day, and the 150th day after the order. Court open. Application, paras. 3 and 7: expiry on this date, without excluding the vacation.
11	Appeal actually presented	27.09.2016 (Tue)	21 days after the last day (the affidavit says 19), and the 171st day after the order. Application: the attorney waited on counsel’s advice about the vacation and swore the affidavits this day, said to be the first day after recovery.
12	Office objections; counsel seeks a week	12.11.2016	Time allowed.
13	C.M.A. No. 10/2017 for condonation made	03.01.2017 (Tue)	119 days after the last day for the appeal. Affidavit of the attorney alone.

II. SUBMISSIONS

6. Mr. Salahuddin Ahmed, learned counsel for the appellant, submitted that the appeal is late by 21 days, but that sufficient cause is shown, because the attorney was ill and the doctor had advised him to rest for three weeks. He further submitted that, even otherwise, the impugned order is void, because the Authorised Officer and the Authority are the same person, namely the Chief Justice, and that limitation does not run against a void order. He relied upon

2018 PLC (C.S.) 1072, 1999 SCMR 1311, PLD 2001 SC 514, 2008 SCMR 1369 and 2015 PLC (C.S.) 1511.

7. Learned A.A.G. submitted that the appeal is time barred, that the application for condonation was filed after a year, and that no sufficient cause for the delay is shown. He submitted that the order was passed by a competent authority, the Chief Justice, and is therefore not a void order.

III. THE DELAY

8. Section 4 of the Act allows thirty days from the communication of the final order, and clause (a) of its proviso provides that where a review or representation to a departmental authority is available, no appeal lies unless it has been preferred and ninety days have elapsed from the date it was preferred. The review was preferred on 09.05.2016. It was not decided, so the ninety days elapsed on Sunday, 07.08.2016. The thirty days then allowed expired on Tuesday, 06.09.2016. The appeal was presented on Tuesday, 27.09.2016, which is 21 days late. The application states the delay as 21 days and the affidavit as 19. The figure of 19 is not explained, and the Tribunal proceeds on 21, which is the figure most favourable to the appellant. It also proceeds on the footing that the review was competent and was made in time.

9. The vacation, if it counted, could enter the computation in two ways, and the application does not say which it intends. If its 62 days were added to the thirty days, the period would end on 07.11.2016 and the appeal would be in time (the first alternative). If they were added to the ninety days, the waiting period would end on 08.10.2016, and the appeal of 27.09.2016 would be premature by 11 days (the second alternative). Neither is the case pleaded, which accepts expiry on 06.09.2016 and a delay of 21 days. Both are examined in Part IV and neither is accepted. Measured from the order itself, the appeal was presented on the 171st day.

10. A period of limitation, once it begins, runs continuously. Section 9 of the Limitation Act provides that where once time has begun to run, no subsequent disability or inability to sue stops it. It is not suspended by the travel of the party, by the illness of a person he has chosen to act for him, or by a vacation of the forum, unless a statute says so. In *Mubarak Masih* and *Pakrock* the Sindh High Court held that once limitation starts to run it does not stop, and in *Raz Khan* the Supreme Court held that repeated representations do not enlarge the prescribed period.[1] The period here expired on 06.09.2016, and nothing stopped it afterwards. The application for condonation was made on 03.01.2017, 119 days later. Section 5 does not stop the clock. It permits the Tribunal, in a proper case, to excuse the delay that has occurred after expiry, and it does so only on proof of sufficient cause. Condonation is therefore not a right. The burden is on the

[1] *Mubarak Masih*, 2019 CLC 321 (Sindh), para. 11; *Pakrock*, PLD 2020 Sindh 136; *Raz Khan*, PLD 1997 SC 397, para. 3.

appellant to explain the delay, and the explanation must show that the appeal could not have been presented in time despite reasonable diligence.

IV. THE VACATION AND SECTION 4 OF THE LIMITATION ACT

11. The plea that the vacation is to be excluded fails on each of the following grounds, which are independent of one another.

(i) Neither Act contains a general exclusion of a vacation. Section 12 of the Limitation Act, which section 6-A makes applicable, excludes the time requisite for obtaining copies and nothing more. Section 4 deals with a period that *expires* on a day when the Court is closed, and lets the act be done on the day the Court re-opens. It does not suspend a period during a closure. Section 6-A applies only sections 5 and 12, so it is open to doubt whether section 4 applies to an appeal before this Tribunal at all. The Tribunal need not decide that, because section 4 does not help the appellant even if it applies.

(ii) The thirty days expired on Tuesday, 06.09.2016, when the Court was open. The vacation had ended on 08.08.2016, a month before. The ninety days ended on Sunday, 07.08.2016, a day on which the Court was closed, and it re-opened on Monday, 08.08.2016. Giving the appellant that benefit, and counting 08.08.2016 as the first of the thirty days, the period ends on 06.09.2016, which is the date the application itself gives. If the first day were taken as 09.08.2016, the period would end on 07.09.2016 and the appeal would be 20 days late. The result does not change.

(iii) The vacation, from 06.06.2016 to 06.08.2016, lay wholly inside the ninety days that clause (a) of the proviso to section 4 makes a condition of the right to appeal. No day of the thirty ran in it, so there was nothing for section 4 to extend (the first alternative). The ninety days are fixed by the proviso in calendar days, and nothing in either Act extends them for a vacation (the second alternative). If they were extended the appeal of 27.09.2016 would be premature and not timely. In *Pakrock* the Bench counted the days that ran before and after a summer vacation and did not treat the vacation as suspending limitation.[2]

(iv) The notification of 05.05.2016 closes the Court for civil business during the summer vacation, but provides that petitions will be received daily on working days, and it says nothing about limitation. Under rule 3 of the Sindh Subordinate Judiciary Service Tribunal (Procedure) Rules, 1993 (the Procedure Rules) the Tribunal observes the same office hours and holidays as the High Court, so the notification governed the Tribunal's Registry as well. Filing was possible throughout, and nothing in it could have misled the appellant within the Explanation to section 5.

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[2] *Pakrock*, PLD 2020 Sindh 136.

(v) The plea contradicts the appellant's own application. Paragraph 3 computes expiry on 06.09.2016 without excluding the vacation, and paragraph 7 claims a delay of 21 days. Had the vacation been excluded there would have been no delay (the first alternative), or the appeal would have been premature (the second alternative). The application cannot rely both on a delay of 21 days and on an exclusion that removes it.

12. What the attorney's affidavit shows is that the appeal was held back on counsel's mistaken view of the law. That is not sufficient cause. In *Mubarak Masih* the Sindh High Court held that the negligence of counsel does not constitute sufficient ground for condonation, and in *Pakrock* it held an appeal barred where the person authorised to file it gave no reasonable explanation for not filing in time.[3]

V. THE ATTORNEY'S ILLNESS

13. The appellant acts through an attorney, and the question is whether the attorney's illness entitles the principal to condonation, or whether the principal ought to have acted through someone else. The answer lies between the two. The appeal is the appellant's, and he, not the attorney, is the party who may seek condonation. An act or omission of an agent within the scope of his authority is the act or omission of the principal. The illness of an agent can therefore be sufficient cause, but only if it is shown that it in fact prevented the step during the days of delay, and that the principal, who remained answerable, could not reasonably have taken the step himself or through another. A principal who leaves a time bound step with one individual bears the consequence of that choice unless he shows that he was diligent and had no alternative.

14. The application treats the attorney's illness as an event outside the appellant's own control. The law of agency does not support that without more. An attorney acts in the name of the principal, and what he does or fails to do within the authority given is in law the act or default of the principal. Appointing an attorney does not discharge the principal's own duty to see that a time bound step is taken. The authority here was express. It covered signing, filing and verifying service appeals before the Tribunal and appointing advocates and sub-attorneys. The record shows no revocation and no appointment of anyone else, although the principal could do either at any time. The Lahore High Court has held that an agent acts in the name of the principal, that the principal may revoke the authority at any time, and that a complaint of the agent's default is a matter between agent and principal (*Noor Alam*, *Abdul Ghafoor* and *Amir Ghaus*).[4] Rule

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[3] *Mubarak Masih*, 2019 CLC 321 (Sindh), paras. 9 to 11; *Azra Masood*, 2007 SCMR 914, para. 12; *Pakrock*, PLD 2020 Sindh 136.

[4] *Noor Alam*, 2015 CLC 1675 (Lahore), para. 7; *Abdul Ghafoor*, 2024 CLC 1415 (Lahore), para. 17; *Amir Ghaus*, 2014 YLR 1986 (Lahore), para. 7; *Ghulam Siddique*, 2009 SCMR 51, para. 7; *CDA*, 2026 SCMR 1033, para. 8; *Mubarak Masih*, 2019 CLC 321 (Sindh), para. 10; *Stallions (Pvt.) Ltd.*, 2026 SCMR 1701, paras. 12 and 13. The agency decisions concern the scope and effect of an attorney's authority, not limitation, and are cited for the law of agency only.

5 of the Procedure Rules lets an appeal be presented by the appellant or by properly appointed counsel, so the attorney's illness did not bar presentation. If the attorney failed in his task, the appellant's remedy lies against the attorney, and not against the respondent, in whose favour a vested right arose when the period ended. The law of limitation assists the vigilant and not the indolent (*Stallions*). The Supreme Court has held that engaging counsel does not absolve a litigant of his responsibilities and that he must keep himself informed (*Ghulam Siddique*), and that the negligence of a lawyer is generally treated as that of the client, as between principal and agent (*CDA*). In *Mubarak Masih* the Sindh High Court added that the remedy for counsel's negligence lies against the counsel. A principal who leaves the filing of a statutory appeal to one person, goes abroad for two months on the application's own account, and shows no enquiry whether it has been filed has not been vigilant. The question is therefore what the appellant himself did between 08.08.2016 and 06.09.2016 to see that the appeal was filed, and the record shows nothing.

15. The ticket at Annexure "A" (page 341 of the compilation) bears on this. It is a PIA ticket for flight PK 783 from Karachi to Toronto on 12.06.2016, issued on 03.06.2016, with no return leg. It shows that the appellant was in Pakistan on 03.06.2016 and that he planned his departure nine days ahead. It does not show that he could have presented the appeal in June, because the appeal could not lie until 08.08.2016. On the application's account he had left for two months from June. What it shows is that his absence was planned and not unforeseen, and that he left after executing a power of attorney and engaging advocates, when the ninety days would run out on 07.08.2016 and an appeal would then be due within thirty days. A party who arranges to be away when a statutory step will fall due must see that the step is taken. The appellant has not stated when he returned, no return ticket is on the record, and nothing explains why neither he, nor the attorney, nor the advocates on record acted between 08.08.2016 and 06.09.2016.

16. The record shows alternatives. The power of attorney expressly allowed the attorney to appoint advocates and sub-attorneys. A firm of advocates had been engaged since 09.06.2016, and an advocate of that firm drafted the memorandum, so the preparation of the appeal did not depend on the attorney's health. What remained was the verification and the affidavit, which the appellant could have affirmed himself. He is a former Senior Civil Judge. The application's case is that the appellant left for two months from June 2016, which takes him to about the middle of August, well before the thirty days ended. The appellant had from 08.08.2016 until 06.09.2016 to act, and no statement of his own explains why he did not.

17. The medical papers do not fill the gap. The Tribunal has no reason to doubt that the attorney may have been unwell at times, but the question is whether the

papers show that he could not act during 07.09.2016 to 27.09.2016. The papers of 2015, of May 2016, of July 2016 and the pharmacy receipt of 08.08.2016 fall outside the delay and disclose no incapacity. Those of 30.09.2016 and 06.10.2016 post-date the appeal. The slip of 26.09.2016 shows the attorney attending an outpatient department in Karachi in person the day before the appeal was presented. The only paper advising rest is the slip of 03.09.2016. It records no diagnosis, shows several investigations marked with question marks, and is from a hospital outside Karachi, where the attorney lives and where every affidavit was sworn. The original was not produced, exemption having been sought. These are observations, not findings of fact. Even taken at face value, three weeks from 03.09.2016 end on 23.09.2016. That leaves the remaining days unexplained, and advice of bed rest is not a certificate that a person was unable to sign or swear an affidavit. Nothing in the papers, and no statement of the appellant, shows that the filing of the appeal was beyond both of them. Illness of counsel is no excuse unless it is shown to have prevented the step during the days of delay. The Supreme Court has refused condonation where a party gave a general account of her own illness without showing that she was prevented from instructing counsel (*Parveen Asif*), where the Advocate-on-Record was seriously ailing (*Ahmed*), and where no medical certificate showed how long counsel's illness lasted (*SKB-KNK*). It has also said that it may intervene where counsel's absence was due to circumstances beyond control, such as death or incapacitation (*CDA*). No incapacity of that kind is shown here for the days in question.[5]

18. The way the application was pursued points the same way. It was filed on 03.01.2017, after the office objection, and about six weeks after the week sought on 12.11.2016, and it gives two figures for the delay. In *Akram Yaseen* the Supreme Court refused condonation where the delay after an office objection was unexplained.[6] Those matters do not decide the application, but a plea of sufficient cause calls for an explanation that is complete and consistent, and this one is not.

VI. THE PLEA OF A VOID ORDER

19. The appellant says that no limitation runs against a void order. The principle has a narrow place. At its highest it reaches an order that is a nullity, passed by an authority that had no jurisdiction over the subject matter or the person. It does not reach an order made by an authority that was competent to make it, which is said to be wrong in fact or in law, or to have been made in breach of procedure or of fairness. Such an order stands until it is set aside by the competent forum, and the forum must be approached within the time that the statute allows. In *Raz Khan*, approved in *Blue Star*, the Supreme Court held that the rule that limitation

[5] *Parveen Asif*, 2008 SCMR 419; *Ahmed*, 2005 SCMR 119; *SKB-KNK Joint Venture*, 2022 SCMR 1615, para. 3; *CDA*, 2026 SCMR 1033, para. 8.
[6] *Akram Yaseen*, 2013 SCMR 1099, para. 6.

does not run against a void order is not an inflexible rule, and that a person who treats an adverse order as a nullity and ignores it beyond the period does so at his own risk. In *Sindh Irrigation and Drainage Authority* it held that the voidness of an award is hardly a ground for condoning delay. If every order challenged as unlawful were free of limitation, section 4 would have no work to do.[7]

20. The impugned order was made by the Chief Justice, who is the Authority for a member of the Sindh Judicial Service under the proviso to rule 2(2) of the Rules, and who under rule 5(4)(b) passes such orders as he deems proper on a major penalty. On its face it records a show cause notice of 11.06.2015 and the reply, a hearing before the Authorised Officer, a final show cause notice of 27.08.2015 and the reply, a personal hearing before the Authority, and reasons. The appellant's complaints in the memorandum of appeal, that the Authorised Officer and the Authority were the same person, that matters not charged were taken into account, and that his defence was not dealt with, are criticisms of how a competent authority exercised its power. Rule 4-A(2) in any case allows the Authority to exercise all the powers of the authorised officer.[8] The complaints presuppose that the power existed. They are grounds for appeal, and an appeal must be filed in time.

21. Of the authorities cited for the appellant, three are decisions of the Supreme Court, and they do not take him further.[9] In *Land Acquisition Collector, Nowshera* the Court held that limitation does not bar a challenge to an order that is a nullity, though it bars a challenge to one that is merely erroneous, and applied the rule to an award of compound interest that the statute did not permit. The principle is the one stated above. The question here is whether the impugned order is of that kind, and the case does not answer it. In *Postmaster General* the Court refused leave against a judgment of the Federal Service Tribunal that had set aside a dismissal, a major penalty which only the Authority could impose, because it had been imposed by the Authorised Officer, the same person acting in a dual capacity, and the civil servant was held to have been prejudiced. The report shows no question of limitation. The Court spoke of prejudice, not of a nullity, and here the order was made by the Authority itself, which under rule 4-A(2) may exercise the powers of the authorised officer. In *Naseeb Khan* the Court allowed the appeal of a civil servant who had been dismissed without a regular inquiry, an opportunity of defence or a personal hearing, and set aside the Tribunal's dismissal of his appeal as time barred. It

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[7] *Raz Khan*, PLD 1997 SC 397, paras. 3 to 5; *Blue Star*, 2013 SCMR 587, para. 4; *Sindh Irrigation and Drainage Authority*, 2026 SCMR 190, paras. 8 to 10; *Azra Masood*, 2007 SCMR 914, para. 13; *Pakrock*, PLD 2020 Sindh 136. Contrast *Abdul Rahim*, 1998 PLC (C.S.) 415 (Karachi), where the Civil Court had no jurisdiction by reason of Article 212 of the Constitution. *Rehmatullah*, 2007 SCMR 729, is not to the contrary, as the judgment does not discuss limitation.

[8] Rule 4-A(2) of the Rules: "Notwithstanding anything contained in these rules the authority may in any case exercise all powers of authorised officer or give any direction to the authorised officer as it may deem fit."

[9] *Land Acquisition Collector, Nowshera v. Sarfaraz Khan*, PLD 2001 SC 514, paras. 6 and 7; *Postmaster General, Southern Punjab v. Ahmad Naeem Bhatti*, 1999 SCMR 1311; *Naseeb Khan v. Divisional Superintendent, Pakistan Railways*, 2008 SCMR 1369, paras. 4 to 6.

found substance in counsel's submissions, which included the point on limitation against a void order, but its reasons deal only with the denial of natural justice. It did not discuss section 5 or say that the order was a nullity. The decision turned on its own facts, and the impugned order here records the stages described above, ending in a personal hearing before the Authority.

22. The appellant's own conduct treats the order as operative. He applied for review under the Rules on the thirtieth day, waited the ninety days that the proviso requires, and then invoked section 4 before this Tribunal. A party who takes the statutory remedy takes it with its limits. He also could not sit still and rely afterwards on the voidness of the order to disregard the period the statute prescribes.

VII. ORDER

23. For these reasons, C.M.A. No. 10/2017 is dismissed. The appeal, having been presented beyond the period prescribed by section 4 of the Act, is dismissed as time barred. C.M.A. No. 9/2017 stands disposed of. The parties shall bear their own costs. The observations above are confined to limitation and are not an expression on the merits of the allegations against the appellant.

24. Service Appeal No. 11 of 2013, which was clubbed with this appeal by order of 03.06.2023 and concerns adverse remarks in the appellant's annual confidential reports, will be taken up separately. The office shall place a copy of this order in that file.

CHAIRMAN

MEMBER

Karachi,
Dated: 16TH day of November 2026