JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

W.P No.3474 of 2020

Capital Development Authority, etc
Vs.
Full Bench, NIRC, Islamabad, etc

Petitioners by:	Mr. Muhammad Nazir Jawad, Advocate.
Respondent No.2 by:	Ms. Sidra Ishaq and Mr. Nasir Hussain, Advocates.
Dates of Hearing:	**19.02.2025 & 21.02.2025**

INAAM ANEEN MINHAS, J:- Through the instant writ petition the petitioners have assailed the order dated 13.04.2020, passed by learned Single Bench, NIRC, whereby grievance petition filed by respondent No.2 was disposed of with direction to the petitioners to deal with respondent No.2's promotion case on analogy of Mr. Shaukat Ali. The petitioners filed an appeal against the order of learned Single Bench, NIRC before learned Full Bench, NIRC, which was dismissed vide order dated 17.08.2020.

2. Brief facts giving rise to this appeal are that the respondent No.2 filed a petition under section 31 of the IRA, 2012 before learned Single Bench, NIRC with the prayer that the petitioners may be directed to consider respondent No.2 for promotion as Room Attendant and that in the meanwhile the petitioners may be directed not to take any adverse action against respondent No.2. Learned Single Bench, NIRC while hearing the matter on 02.11.2018, admitted the petition for hearing and issued notices to the petitioners and restrained them not to take any adverse action qua the

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service of respondent No.2. The petitioners appeared and contested the case. Learned Single Bench after hearing learned counsel for the parties vide order dated 13.04.2020, disposed of the petition with the observation that respondent No.2 has succeeded to plead his case by providing details of promotion case of one Mr. Shaukat Ali Farash, therefore, the petitioners were directed to deal with respondent No.2 on analogy of Mr. Shaukat Ali. The petitioners feeling aggrieved with the order of learned Single Bench, NIRC, filed an appeal before learned Full Bench, NIRC, which was dismissed vide order dated 17.08.2020.

3. Learned counsel for the petitioner argued that the impugned orders are illegal and invalid because there is no rule in the CDA service regulations that allows for the promotion of a Frash to a Room Attendant; that respondent No.2's claim is unjustified because as per record Shoukat Ali is still working as a Frash in BPS-05 and respondent No.2 deliberately withheld the true fact. Learned counsel for the petitioners emphasized that promotions must be based strictly on the established rules and as per the CDA Service Regulations of 1992, there is a specific policy regarding the promotion of a Frash to a Room Attendant and the authority has sole discretion over promotions and no one has the right to challenge or seek unfair advantages in this process. He also argued that after passing the order of learned Single Bench, NIRC dated 13.04.2020 respondent No.2 was informed by the relevant directorate about filing the appeal, however, due to COVID-19 crisis, government procedures for filing appeals and completing the official processes were significantly delayed and the delay in filing the appeal was not intentional.

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4. Learned counsel for respondent No.2 has opposed the instant petition and contended that both the fora below have passed the impugned orders in accordance with law, therefore, this petition may be dismissed.

5. I have heard the arguments of learned counsel for the parties and perused the record.

6. As per record the appeal before learned Full Bench, NIRC against the order of learned Single Bench, NIRC dated 13.04.2020 was hopelessly time-barred, therefore, an application for condonation of delay was filed along with the appeal. Perusal of the application for condonation of delay shows that no explicit reason has been mentioned in the application. During course of the arguments learned counsel for the petitioners was confronted with the question that the appeal was filed beyond the period of limitation and is hopelessly barred by time, he could not elucidate explicitly.

7. Learned Full Bench, NIRC, while dealing with the issue of limitation observed as follows:-

> *"Reasons except submitting that the appellant is a Government department and while filing any kind of application, reply, evidence, appeal, etc before any forum the applicant have follow a lengthy and formal procedure and due to corona pandemic the procedure badly affected and delay in filing of appeal was not intentional. The Government Department in the matter of limitation, cannot be treated differently from that of citizen as the Government Department has all resources and facilities at its disposal, so it is not within its right to complaint of delay being Government Department on the pretext of the procedural formalities as the prescribed limitation provided in the matter is sufficient to meet them. The*

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Honorable Supreme of Pakistan, in this context in a case titled Government of Pakistan through Ministry of Defence V/S Messers Azhar Brothers Limited reported as 1990 SCMR 1059 has held that:-

> *"5... .However, as the law stands, the Government cannot be treated differently that a private litigant on the question of limitation under section 5 of the Limitation Act. We may observe that if in the present case the appellant would have made an averment in their application under section 5 of the Limitation Act that the delay had occurred on account of deliberated act on the part of its some official who was in league with the respondent and if that ground would have been substantiated, it would have been a good ground for condonation of the delay. As pointed out by us hereinabove that this ground was not taken up by the appellant before the High Court and, therefore, the High Court, in the absence of any such ground of having been raised, could not have condoned the delay. The above appeal has, therefore, no merits and hence it is dismissed".*

In another case titled Pakistan Post office V/S Settlement Commissioner and other, reported as 1987 SCMR 1119, the Honorable Supreme Court of Pakistan has held as follow:-

> *"It is necessary to mention here a peculiar feature of Government litigation. No doubt, it was observed in Province of East Pakistan V. Abdul Hamid Dariji 1970 SCMR 558 that in matter of condonation of delay under section 5 of the Limitation Act the Government will not be shown extra indulgence than an ordinary litigant and if so desired only an amendment of law was the way out. The further experience of nearly two decade after that judgment shows that the inability on the part of the Government to get such an amendment made, has been treated as an accepted and inviolable rule to refuse condonation of delay wherever the plea is raised of departmental delays;" ..... "Hence a departmental delay whenever put forward as a ground for condonation of delay requires consideration on its merits and rejected or accepted accordingly, as the case may be."*

Even otherwise it is the constant view of the Superior Courts that each and every day delay should be explained to the satisfaction of the court. The impugned order was passed on 13.04.2020 and the appellant applied for certified copy of the

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order on 24.07.2020 and obtained the same on very that day, while the instant appeal has been filed in the office of the Commission on 10.08.2020. The appellant filed application for certified copy after laps of almost three and half month and even after obtaining copy of the order the appeal filed after 15 days. The Honorable Supreme Court in a case titled Almas Ahmed Faiz V/S Secretary Government of the Punjab Housing and Physical Planning Development Lahore and another reported as 2007 TD (Labour) 27 has been held that:-

> *"It is yet another principle of law that the party approaching Court of competent jurisdiction for redress of grievance beyond specified period of limitation is bound to explain each day's delay to the satisfaction of respective forum because a valuable right accrues to the other side. "----"It is settled law that the period for redressal of grievance under section 46 of I.R.O., begins once the cause of action has accrued."----"It is also a settled law that it is the duty of Court to determine the question of limitation irrespective of the fact whether such plea was raised or not by virtue of section 3 of the Limitation Act."---"It is basic principle that if mandatory condition for the exercise of jurisdiction by a Court is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction."*

In another case reported as 2002 SCMR 1903 titled Messrs TribalFriends Co. V/S Province of Baluchistan, the Honorable Apex Court has held as under:-

> *"Defaulting party while applying for condonation of delay must explain and account for the delay of each day because on expiry of period of limitation, a valuable right is created in favour of other party".*

Similar view has also been taken in another case reported as 1988 SCMR 1354 titled WAPDA V/S Aurangzeb, the Honorable Court has held that:-

> *"After prescribed period of limitation has*

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> *elapsed, the door of justice is closed and no plea of injustice, hardship or ignorance can be of any avail unless the delay is properly explained and accounted for ---Application for condonation of delay rejected and appeal dismissed as time barred".*

The Honorable Sind High Court in a case reported as 2012, CLD 194 (a) Sind has held that:-

> *"Mandatory duty under S.3 of Limitation Act 1908, has been imposed upon court to dismiss a suit, appeal or application, if it has been instituted after prescribed period of limitation....Party wishing to take advantage of S.5 of Limitation Act, 1908, must therefore, satisfy, the court that it was not negligent and had been prosecuting its case with due diligence and care"*

8. In view of the above reproduced order of learned Full Bench, NIRC, it is clear that learned Full Bench has rightly relied upon the authoritative judgments of the Superior Courts and held that the petitioners have failed to justify the delay in filing appeal before it and that the application for condonation of delay is also without mentioning any cogent reason. It is established principle of law that the law helps the vigilant and not the indolent.

9. Taking the above into account, no illegality has been found in the impugned orders passed by learned Single Bench, NIRC and learned Full Bench, NIRC, which do not require interference by this Court. Consequently, the instant writ petition is **dismissed** being devoid of merit.

(INNAM AMEEN MINHAS)
JUDGE

Announced in open Court on 11.03.2025

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