

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT DERA ISMAIL KHAN.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (Judicial)

Service Appeal No.8637/2020

Date of presentation of appeal.....27.07.2020
Dates of Hearing.....20.03.2023
Date of Decision.....20.03.2023

Saadullah (Constable No.8625/LHC)son of Atta Muhammad resident of village Muryali, Tehsil & District Dera Ismail Khan Constable No.8625/LHC (BPS-07) attached with District Police Officer Office Dera Ismail Khan, posted at Police Station City Dera Ismail Khan Cell No.03449393850.....**Appellant**

Versus

1. **Provincial Police Officer** Khyber Pakhtunkhwa, Peshawar.
 2. **Deputy Inspector General of Police, Headquarters,** Khyber Pakhtunkhwa, Peshawar.
 3. **Deputy Inspector General of Police, Commandant Frontier Reserve Police,** Peshawar.
 4. **Superintendent of Police,** Frontier Reserve Police, District Dera Ismail Khan.
-(**Respondents**)

Present:

Mr. Burhan Latif Khaisori,
Advocate.....For the appellant.

Mr. Muhammad Jan,
District AttorneyFor the respondents

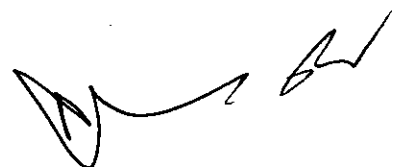
**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDERS DATED 03.07.2020,
AND 20.08.2013 PASSED BY RESPONDENT NO.3 AND
AGAINST THE IMPUGNED ORDER DATED 15.07.2011
PASSED BY RESPONDENT NO.4**



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The facts surrounding the appeal are that the appellant was inducted in the Police Department on 10.08.2009 as Constable in BPS-07; that in the year 2011 the appellant was posted at Police Check Post Naivela, Police Station Paroa; that on 24.04.2011 some unknown persons attacked at the check post wherein constable Muhammad Sohail got injured and the appellant was charged for the occurrence; that the complainant Muhammad Sohail effected compromise with the appellant; that the appellant was ultimately acquitted; that an enquiry was initiated against the appellant, he was charge sheeted by respondent No.4, statement of allegations was also served upon him and one Gul Manan Lines Officer was appointed as enquiry officer; that the appellant submitted reply to charge sheet and complied with the directions issued by respondent No.4; that the enquiry officer recommended reinstatement of the appellant with effect from 18.05.2011 by awarding him minor punishment as is apparent from the impugned order dated 15.07.2011; that one year increment with cumulative effect was withheld vide the above order; that the appellant had been knocking the doors of the respondents and lastly filed departmental appeal to respondent No.3 on 17.03.2020, which was rejected vide impugned order dated 03.07.2020; that aggrieved of the impugned orders dated 03.07.2020, 20.08.2013 and 15.07.2011 issued by respondents No.3 & 4, the appellant has filed this appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the

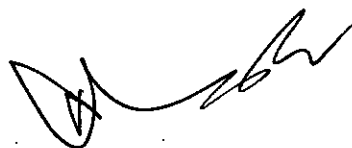


appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant. It was mainly contended that the appeal was badly barred by time; that that the appellant was acquitted on the basis of compromise while his involvement in the criminal offence was proved in the departmental proceedings and that the appellant was awarded punishment after fulfillment of codal formalities.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order.

5. It appears that vide order dated 15.07.2011, while disposing of the departmental enquiry, the Superintendent of Police FRP DIKhan, had already taken lenient view by reinstating the appellant and awarding him minor punishment of withholding of one-year increment with cumulative effect. Record further reflects that vide order dated 20.08.2013, departmental appeal of the appellant, filed before Respondent No.3 was rejected. Where after the appellant kept mum for more than six years and after such a long slumber woke up and filed an application on 17.03.2020 to the Commandant FRP, which was responded with letter No.03.07.2020 with the observation that the first appeal of the appellant was already rejected vide order bearing Endst. No.5441/EC dated 20.08.2013. This appeal was brought on

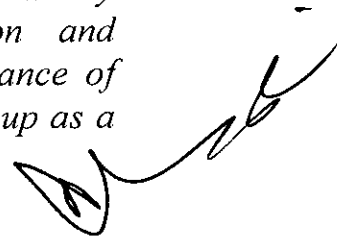


27.07.2020. The appeal before this Tribunal is apparently barred by time. The appellant has filed an application for condonation of delay on the sole ground that the impugned order dated 15.07.2011 was passed under the Removal from Service Ordinance, 2000, which was repealed by the time the impugned departmental action was initiated, therefore, the impugned order was void and no limitation ran against the void order. This sole ground could have been considered provided the appellant was vigilant in pursuing his cause. It appears that the appellant is quite indolent rather he appears to be quite satisfied on the impugned order over a couple of years that was why he did not challenge it further. Similarly, there is no explanation as to why the appeal was belatedly filed before this Tribunal. The appellant has smartly tried to cover up the delay by filing second appeal before respondent No.3 in the year 2020, whereas his earlier appeal, filed before the same authority had been rejected on 20.08.2013. The appellant ought to have either approached the Inspector General of Police in revision or he should have filed appeal before this Tribunal within thirty days of the appellate order rejecting his departmental appeal but he did not opt for any of the two and kept silent for years and then moved a second application on 17.03.2020 which was responded vide letter dated 03.07.2020, stating that the departmental appeal of the appellant had already been rejected vide order dated 20.08.2013. Therefore, the ground taken in the application for condonation of delay is not tenable and could not be considered. The appellant has relied on 2013 SCMR 752 titled "Chairman State Life Insurance Corporation of Pakistan, Karachi and others versus Siddiq Akbar", wherein the august Supreme Court

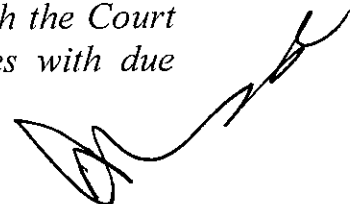


of Pakistan held that limitation was a bar against a party in pursuing its cause and not a bar regarding assumption of jurisdiction of court because the court for justified reasons could condone the time limitation. This case law is not applicable to the facts of the instant case. We, however, rely on 2023 SCMR 291 titled "*Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala versus Khalid Mehmood and others*", which is a quite relevant law settled by the apex Court, wherein the august Supreme Court of Pakistan was pleased to have found as under:

"12. The law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur and when no sufficient cause for such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. There is no relaxation in law affordable to approach the court of law after deep slumber or inordinate delay under the garb of labeling the order or action void with the articulation that no limitation runs against the void order. If such tendency is not deprecated and a party is allowed to approach the Court of law on his sweet will without taking care of the vital question of limitation, then the doctrine of finality cannot be achieved and everyone will move the Court at any point in time with the plea of void order. Even if the order is considered void, the aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period, authorizing a litigant to enforce his existing right within the period of limitation. The Court is obliged to independently advert to the question of limitation and determine the same and to take cognizance of delay without limitation having been set up as a



defence by any party. The omission and negligence of not filing the proceedings within the prescribed limitation period creates a right in favour of the opposite party. In the case of Messrs. Blue Star Spinning Mills LTD -Vs. Collector of Sales Tax and others (2013 SCMR 587), this Court held that the concept that no limitation runs against a void order is not an inflexible rule; that a party cannot sleep over their right to challenge such an order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings. In the case of Muhammad Ifikhar Abbasi Vs. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent. While in the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others (2022 SCMR 933), it was held that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact this law has been premeditated to dissuade the claims which have become stale by efflux of time. The litmus test therefore always is whether the party has vigilantly set the law in motion for redress. The Court under Section 3 of the Limitation Act is obligated independently rather as a primary duty to advert the question of limitation and make a decision, whether this question is raised by other party or not. The bar of limitation in an adversarial lawsuit brings forth valuable rights in favour of the other party. In the case of Dr. Muhammad Javaid Shafi Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due



diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself."

6. The upshot of the above discussion is that this appeal is barred by time and is accordingly dismissed. We direct that the costs of the appeal shall follow the result. Consign.

7. *Pronounced in open Court at Dera Ismail Khan and given under our hands and the seal of the Tribunal on this 20th day of March, 2023.*



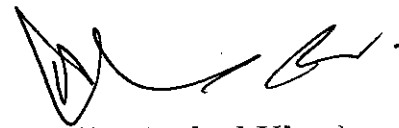
KALIM ARSHAD KHAN
Chairman
Camp Court D.I.Khan



SALAH UD DIN
Member (Judicial)
Camp Court D.I.Khan

ORDER

- 20th March, 2023
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present.
 2. Vide our detailed judgement of today placed on file, the upshot of the above discussion is that this appeal is barred by time and is accordingly dismissed. We direct that the costs of the appeal shall follow the result. Consign.
 3. *Pronounced in open court at D.I.Khan and given under our hands and seal of the Tribunal on this 20th day of March, 2023.*



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan



(Salah Ud Din)
Member(Judicial)
Camp Court D.I.Khan