

*Service Appeal No1612/2019 titled "Sajjad Hussain -vs-Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Khyber Pakhtunkhwa, Peshawar and others" and connected appeal No. 1613/2019 titled "Ejaz Hussain versus Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Khyber Pakhtunkhwa, Peshawar and others" decided on 02.06.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member, Executive Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**  
**M. AKBAR KHAN** ... **MEMBER(Executive)**

*Service Appeal No.1612/2019*

Date of presentation of Appeal.....02.12.2019  
Date of Hearing.....02.06.2023  
Date of Decision.....02.06.2023

**Mr. Sajjad Hussain son of Zahid Hussain, Ex-Sepoy No.4836  
Malakand Levies, Malakand.....Appellant**

Versus

1. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The DCO/Commandant, Malakand Levies.**
3. **The Commissioner, Malakand Division.....(Respondents)**

\*\*\*\*\*

*Service Appeal No.1613/2019*

Date of presentation of Appeal.....02.12.2019  
Date of Hearing.....02.06.2023  
Date of Decision.....02.06.2023

**Mr. Ejaz Hussain son of Fazal Ghani, Ex-Sepoy No.5334 Malakand  
Levies, Malakand.....Appellant**

Versus

1. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The DCO/Commandant, Malakand Levies.**
3. **The Commissioner, Malakand Division.....(Respondents)**

Present:



Mr. Asad Ullah Taimur Muhmand,  
Advocate.....For the appellants

Mr. Fazal Shah Mohmand,  
Additional Advocate General .....For respondents.

-----  
**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974  
AGAINST THE ORIGINAL ORDER DATED 27.12.2010  
AND REJECTION OF DEPARTMENTAL APPEAL  
DATED 29.04.2019.**

**CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Through this single judgment all the above appeals are going to be decided as both are similar in nature and almost with the same contentions, therefore, both can conveniently be decided together.

2. Brief facts of the appeals are as under:

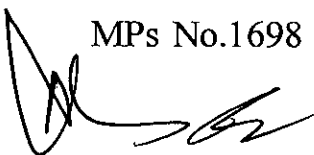
**i. SA No.1612/2019 Sajjad Hussain:**

The appellant was appointed as Constable (Sepoy) in the respondent department. During service, appellant alongwith some other officials were terminated from service due to absence. The date of termination of the appellant, Mr. Sajjad Hussain, is 27.12.2010. In the meanwhile, some of the colleagues of the appellants were reinstated by the department while some were reinstated by the Federal Service Tribunal. The appellant filed appeal before the Commissioner Malakand Division which was not responded. Therefore, he approached the Federal Service Tribunal by filing appeal, which was decided vide order dated 17.04.2018 with direction to respondents to decide the departmental appeal of the appellant in accordance with law after affording an opportunity of personal hearing to the appellant within a period of three months. After passing

of the order by the Federal Service Tribunal, the appellant filed departmental appeal before the appellate authority but the same was not responded, where-after, the appellant again approached to the Federal Service Tribunal by filing appeal which was decided on 04.03.2019 with direction to Secretary Home & Tribal Affairs to give opportunity of personal hearing and decide the pending departmental appeal. In view of the directions of the Federal Service Tribunal, the respondent department conducted personal hearing of the appellant and passed the impugned order of dismissal of departmental appeal. Lastly, the appellant approached this Tribunal.

**ii. SA No.1613 of Ijaz Hussain:**

The appellant was constable (sepoy) under the respondents when his services were terminated on 01.06.2009 owing to his absence along with others; that some officials submitted appeals before the authority which were accepted and they were reinstated; that the appellant also filed appeal before the Commissioner Malakand on 16.01.2012 but that was not decided; that some of the colleagues were reinstated by the Federal Service Tribunal (FST); that the appellant came to know that his colleagues were reinstated by the FST, he approached the FST and the FST vide order dated 17.04.2018 directed the respondent to decide the pending departmental appeal of the appellant in accordance with law within three months; that the appellant again filed MP No.1700/2018 before the FST; that the FST directed on 04.03.2019 in MPs No.1698 & 1700/2018 in appeal No.773 & 775 (P) CS/2017 to

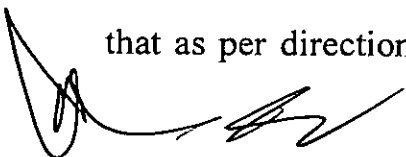


give opportunity of personal hearing and decide the pending departmental appeals; the respondent conducted personal hearing and passed the impugned order holding the departmental appeal to be barred by time, hence, this appeal.

3. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.

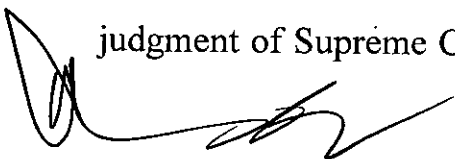
04. Learned counsel for appellants contended that the impugned orders were illegal and void as in similar nature cases, other colleagues of the appellants were reinstated into service by the department; that no show cause notices had been issued to the appellants and the penalty given by the respondents was not in accordance with law and rules. He submitted that the absence of the appellants was not intentional rather some unavoidable circumstances had compelled them; that other employees who had terminated from service vide the same order, had reinstated by the department which showed clear discrimination on the part of respondents. Further submitted that it was a settled law that major penalty could not be imposed without regular inquiry, wherein, the same irregularity had been made by the respondents. Lastly, he submitted that the appellants had been condemned unheard. Therefore, he requested for acceptance of the instant appeal.

05. On the other hand, learned AAG submitted that the appellants were terminated from service on the ground of absence. He submitted that as per directions of the Hon'ble Federal Service Tribunal, chance



of personal hearing was given to the appellants but the appellants gave false statements in response to personal hearing. Further submitted that the appeals before the authority were badly time barred. Lastly, he submitted that the respondents have passed the impugned orders as per rules & regulations. Therefore, he requested for dismissal of these appeals.

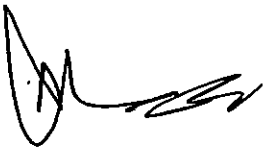
06. It reflects from the very heading the appeal No.1612/2019 that the appellant the challenged the order dated 27.12.2010 whereby he was terminated from service.(Similarly, in Service Appeal No.1613/2019 the appellant has filed the departmental appeal against the order dated 01.06.2009 which has not been challenged before the Federal Service Tribunal.) It also reflects from the application bearing endorsement of Reader to Commissioner Malakand Division that the appellant filed an application for his reinstatement to Commissioner Malakand Division on 21.09.2011. The said application does not show date of termination of the appellant. The appellant has filed this appeal No.1612/2019 on 02.12.2019, which is hopelessly barred by time. Although there is an application for condonation of delay but with no good ground as the entire stress was made and stress in the application was made on two points. First, that the impugned order was void ab initio and no limitation ran against the void order and second that the cases should be decided on merits. Nothing could be said or explained as how the impugned orders were void. We in this respect rely on a recent judgment of Supreme Court of Pakistan reported as 2023 SCMR 291 –



titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala versus Khalid Mehmood and others" the relevant para is reproduced below:

*"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 Iftikhar 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."*

In the above judgment the august Supreme Court of Pakistan found that there was no relaxation available in the law to approach the Court after deep slumber or inordinate delay under the garb of labeling and order or action vide with the articulation that no limitation ran against the void order. The august Court went on saying that if such tendency was not deprecated and a party was 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 could not be achieved and everyone move the court at any point and time with the plea of void order. The Hon'ble Court further said that even if the order was considered void, the aggrieved person should act more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which did not provide any premium of extending limitation period as a vested right or an inflexible rule. Same is the case in these two appeals. Besides when the departmental representation is found to be barred by limitation, the appeals before the Tribunal would not be maintainable. True that in view of the judgment of the Supreme Court of Pakistan reported as 2020 PLC (CS) 34 titled "*Usman Ali Chachhar versus Maula Bakhsh Chachhar*", the departmental appellate authority in the Khyber Pakhtunkhwa was competent to condone delay in filing the departmental appeal if it is satisfied that, inter alia it "*was for reasons beyond the control of the appellant*" or, "*sufficient cause*" was



shown (as the case may be), yet in these appeals none of the above situations had been urged nor has it been explained that the appellants had submitted any application for condonation of delay to their appellate authority, which was not considered. Last but not the least the appellants referred that all the legal steps were earlier taken by them before the FST but they failed to explain why these last appeals have been filed before this Tribunal. Be that as it may, these appeals are not maintainable. Moreover, the appellate order this appeal is of 29.04.2019 and that of the connected appeal is of 12.06.2019 while these appeals have been filed on 02.12.2019, with no plausible or sufficient ground agitated in the applications for condonation of delay, therefore, these appeals are also barred by time and are dismissed accordingly with costs. Copies of this judgment be placed in the connected file. Consign.

07. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 2<sup>nd</sup> day of June, 2023.***



**KALIM ARSHAD KHAN**  
Chairman



**MUHAMMAD AKBAR KHAN**  
Member (Executive)