

*matter of mere technicality but foundationally of the
"Law" itself."*

8. This Tribunal can enter into merits of the case only, when the appeal is within time. Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation, its merits need not to be discussed.

9. Consequently, the appeal in hand stands dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.12.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN



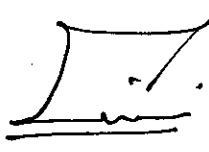
(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT D.I.KHAN

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 Khudaded 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 is 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



the instant service appeal after considerable delay on 17.10.2022. The appellant was required to explain delay of each and every day, however he has not mentioned any sufficient cause in his application for condonation of delay. It is thus evident that the revision petition as well as service appeal of the appellant are hit by bar of limitation.

7. Supreme Court of Pakistan in its judgment dated 03.10.2022 titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala Versus Khalid Mehmood and others" passed in Civil Appeals No. 1685 to 1687 of 2021 has held as 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

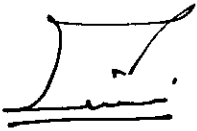
rules, therefore, the same may be kept intact and the appeal in hand may be dismissed with cost.

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

6. The appellant was proceeded against on the allegations of absence from duty with effect from 19.07.2019 till 02.10.2019 and was dismissed from service vide the impugned order dated 16.01.2020. The appellant filed departmental appeal on 25.06.2020, which was dismissed vide order dated 29.07.2020. The appellant then preferred revision petition, which was filed vide order dated 24.03.2021 passed by Inspector General of Police Khyber Pakhtunkhwa Peshawar on the ground that the same was badly time barred. It appears from the record that instead of approaching this Tribunal through filing of service appeal against the afore-mentioned order dated 24.03.2021 passed by Inspector General of Police Khyber Pakhtunkhwa Peshawar, the appellant submitted another departmental appeal to the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which too was filed vide order dated 01.04.2022 passed by Inspector General of Police Khyber Pakhtunkhwa Peshawar being time barred. Filing of successive revision petitions by the appellant could not legally enlarge the period of limitation and the instant service appeal of the appellant is thus time barred. The appellant after rejection of his revision petition vide order dated 24.03.2021, was required to have filed service appeal before this Tribunal within 30 days of communication of the said order. The appellant has, however filed



or permission of the competent Authority, which amounted to gross misconduct. He next contended that the appellant was a member of disciplined force, however he remained indolent and his departmental appeal as well as revision petition were badly time barred. He further contended that the appellant even did not approach this Tribunal within the prescribed period and his service appeal is also badly time barred. He also contended that the appellant was issued charge sheet as well as statement of allegations, however he willfully remained absent from duty and did not even join the inquiry proceedings. He next argued that final show-cause notice was personally served upon the appellant, however he did not submit reply and deliberately avoided personal appearance before the competent Authority. He further argued that the appellant was in the habit of remaining absent from duty without any leave or permission of the competent Authority and previously too he was awarded minor punishments. He next agitated that after his dismissal from service vide order dated 16.01.2020, the appellant got involved in case of narcotics and FIR No. 207 dated 17.02.2020 under Section 11 (B)-CNSA was registered against him in Police Station Cantt District D.I.Khan. He further agitated that the appellant was having a tainted service career and his retention in Police Department was bringing bad name to the whole Police Department, therefore, he has rightly been dismissed from service. In the last he requested that as the impugned orders were passed in accordance with relevant



was dismissed vide order dated 29.07.2020. The revision petition of the appellant also remained fruitless, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, however they failed to submit reply/comments, therefore, their right of filing of reply/comments was struck off vide order dated 16th May, 2023.

3. Learned counsel for the appellant contended that no charge sheet, statement of allegations or final show-cause notice was issued to the appellant and the mandatory provisions of Police Rules, 1975 were not complied with. He next contended that the appellant was condemned unheard as he was neither associated with the inquiry proceedings nor opportunity of personal hearing or self defence was granted to him. He further contended that the departmental appeal of the appellant as well as his revision petition were dismissed in a cursory manner without assigning any cogent and speaking reasons. He further argued that the departmental appeal, revision as well as the service appeal were filed after communication of the respective impugned orders to the appellant, therefore, the bar of limitation is not attracted. In the last he requested that the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned District Attorney for the respondents while controverting the arguments advanced by learned counsel for the appellant contended that the appellant remained absent from duty for a period of about six months without any leave

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT D.I.KHAN

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

Service Appeal No. 1499/2022

Zafar Iqbal, Ex-FC No. 7373, FRP Bannu Range, presently Basti Sher Pao Abad, Near Madina Colony, Dera Ismail Khan.

(Appellant)

Versus

Government of Khyber Pakhtunkhwa, through Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar and 07 others.

(Respondents)

Present:

Muhammad Idrees Khan, Advocate.....For the appellant
Muhammad Jan, District AttorneyFor respondents

Date of presentation of Appeal.....17.10.2022

Date of Hearing.....21.12.2023

Date of Decision.....21.12.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Brief facts giving rise to the instant appeal are that the appellant was proceeded against departmentally on the allegations of absence from duty with effect from 19.07.2019 to 08.08.2019 & 09.08.2019 till the date of issuance of charge sheet and statement of allegations on 02.10.2019, without any leave or permission of the competent Authority. On conclusion of the inquiry, he was awarded major punishment of dismissal from service vide order dated 16.01.2020 passed by Superintendent of Police FRP, Bannu. The penalty of dismissal from service so awarded to the appellant was challenged by him through filing of departmental appeal on 25.06.2020, which