

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

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

*Service Appeal No. 1607/2023*

Date of presentation of Appeal.....04.08.2023  
Date of Hearing.....17.04.2024  
Date of Decision.....17.04.2024

**Ajmeer Shah S/o Qudrat Shah, Afghan Colony Faqir Abad**  
**Peshawar. ....Appellant**

Versus

1. The Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Capital City Police Officer Peshawar.
3. Superintendent of Police City Division of Peshawar.  
.....(Respondents)

Present:

Mr. Kabir Ullah Khattak, Advocate.....For the appellant  
Mr. Umair Azam, Additional Advocate General,.....For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974  
AGAINST THE ORDER DATED 01/01/2020 (TO THE  
EXTENT OF MINOR PUNISHMENT) WHEREBY THE  
APPELLANT WAS AWARDED MINOR PENALTY AS  
WELL AS THE PERIOD OF ABSENCE TO BE  
TREATED AS LEAVE WITHOUT PAY.**

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Appellant was serving as Constable with the respondent-department, in the year 2017-18, he became ill and due to his illness he was unable to perform his duty and remained absent from duty; that vide order dated 24.10.2018, the appellant was imposed major penalty of dismissal from service on the allegation of absence from lawful duty with effect from 24.04.2017 to 19.03.2018 (10 months & 23 days); that feeling aggrieved from the



order dated 24.10.2018, the appellant filed departmental appeal on 19.11.2018, which was rejected/dismissed vide order dated 11.02.2019; that the appellant filed revision petition on 06.03.2019 before the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, which was partially accepted vide order dated 01.01.2020 by converting the major penalty of dismissal from service into withholding of increments for two years with cumulative effect and the period of absence was treated as leave without pay, hence, this appeal on the grounds the neither regular inquiry was conducted in the matter nor opportunity of personal hearing was afforded to the appellant and he was condemned unheard.

2. On admission of the appeal to regular hearing, notices were issued to the respondents. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. In the reply, the respondents referred to a number of punishments awarded to the appellant at different points of time justifying the impugned punishment.

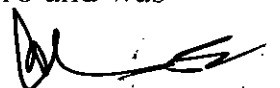
3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order (s).

5. The appellant, while serving as Constable at Police Station Pharipura, was proceeded against departmentally on the allegation of absence from duty with effect from 24.04.2017 to 19.03.2018 (10

months and 23 days). The appellant was issued charge sheet as well as statement allegations and inquiry was also conducted in the matter wherein the statement of the appellant was also recorded. The appellant had taken the plea that he was ill and was unable to perform the duty and the doctor also advised him complete bed rest but he failed to produce any documentary evidence in the shape of medical prescriptions that he was ill and the doctor advised him bed rest. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide order dated 24.10.2018, against which the appellant filed departmental appeal, which was rejected/dismissed. There-after, the appellant filed revision petition before the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. The appellate board, keeping in view the long service of the appellant of 09 years, 05 months and 26 days and taking lenient view, converted the penalty of dismissal from service into withholding of increments for 02 years with cumulative effect and the period of absence was treated as leave without pay. The appellant has admitted his absence from duty in grounds-B of the appeal that his absence was not intentional but was due to involvement of criminal case as well as domestic problems but the appellant has failed to produce any documentary evidence in this respect. Furthermore, the appellate board had already taken lenient view by converting the penalty of dismissal from service into withholding of increments for two years with cumulative effect and treating the period of absence as leave without pay.

6. The appellant was proceeded against on the allegations of absence from duty with effect from 24.04.2017 to 19.03.2018 and was




dismissed from service vide the order dated 24.10.2018. The appellant filed departmental appeal on 19.11.2018, which was rejected/dismissed vide order dated 11.02.2019. The appellant then preferred revision petition, which was partially accepted vide order dated 01.01.2020 by converting the penalty of dismissal from service into withholding of increments for two years with cumulative effect and the period of his absence was treated as leave without pay. The appellant, was required to have filed service appeal before this Tribunal within next 30 days of communication of the order dated 01.01.2020 but he filed the instant service appeal after inordinate and unexplained delay on 04.08.2023. The appellant was required to explain delay of each and every day but he has not mentioned any sufficient cause in his application for condonation of delay.

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

8. In view of the foregoing discussion, the appeal in hand being barred by time stands dismissed. Costs shall follow the event. Consign.

9. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 17<sup>th</sup> day of April, 2024.

  
**KALIM ARSHAD KHAN**  
Chairman

  
**MUHAMMAD AKBAR KHAN**  
Member (Executive)


**ORDER**


17<sup>th</sup> April, 2024

1. Learned counsel for the appellant present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, the appeal in hand being barred by time stands dismissed. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 17<sup>th</sup> day of April, 2024.*

  
(Muhammad Akbar Khan)  
Member (Executive)

  
(Kalim Arshad Khan)  
Chairman