

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No.2098/2023

Date of presentation of Appeal.....23.10.2023
Date of Hearing.....31.07.2024
Date of Decision.....31.07.2024

Dr. Taj Nawaz Khan Ex-Senior Dental Surgeon, Health Department, R/O Hamza Flats, Warsak Road, Peshawar
.....(**Appellant**)

Versus

1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary, Civil Secretariat, Peshawar.
2. **The Secretary, Government of Khyber Pakhtunkhwa Health Services Department, Civil Secretariat, Peshawar.**
3. **The Secretary, Government of Khyber Pakhtunkhwa Health Services Department, Civil Secretariat, Peshawar.**

.....(**Respondents**)

Present:

Mr. Khalid Rehman, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED DECISION OF THE PROVINCIAL SELECTION BOARD DATED 02.12.2021 WHEREBY THE APPELLANT WAS REFUSED PROMOTION TO THE POST OF PRINCIPAL DENTAL SURGEON (BPS-19) AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL BUT EH SAME WAS NOT DISPOSED OF IN ACCORDANCE WITH THE LAW.

JUDGMENT

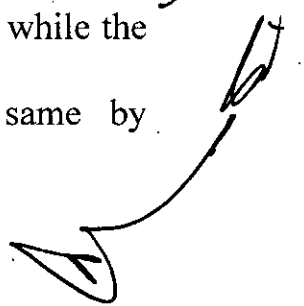
KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, is that he was serving on the post of

Senior Dental Surgeon (BPS-18) since 11.08.2006; that in the year 2015, he was allegedly eligible for promotion to BPS-19 for which his case was sent to the Provincial Selection Board, but he was not given promotion and was accordingly retired from service on 12.08.2017; that aggrieved of above, he filed Writ Petition No.4812-P/2017 before the Peshawar High Court, which was disposed of vide order dated 12.06.2019 with the direction to respondents to consider his case for promotion; that the respondents were again directed through an order in the COC to consider the appellant in the next PSB; that his case was placed before the PSB held on 02.12.2021, wherein, his case was dropped from promotion; that feeling aggrieved, he filed departmental appeal on 25.08.2022 but the same was not responded, hence, the instant service appeal.

02. 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 defense setup was a total denial of the claim of the appellant.

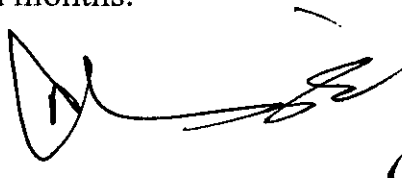
03. We have heard learned counsel for the appellant and learned District Attorney for respondents.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).



05. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, it appears to us that appellant was serving as Senior Dental Surgeon (BPS-18) in the Health Department. For promotion to the next higher grade i.e. Principal Dental Surgeon (BPS-19), vacancies were available and his case was processed but promotion was not given and in the meanwhile, he stood retired from service on 12.08.2017. In order to get promoted, he filed a Writ Petition No.4812-P/2017 before the Hon'ble Peshawar High Court and the Hon'ble Peshawar High Court, vide order dated 12.06.2019 disposed of the same with the direction to consider the appellant for notional promotion to BPS-19. When no response was taken by the respondents, he filed COC Petition No.457-P/2020 before the Peshawar High Court for issuing directions to the respondents to consider him for promotion before the PSB. Vide order dated 29.06.2021 they were again directed to consider him for promotion. In compliance, the respondents placed his case before the PSB, however, case of the appellant was dropped.

06. The decision of the Provincial Selection Board was made on 02.12.2021, while the appellant filed departmental appeal 25.08.2022 (when more than eight months were passed) and then he filed the instant service appeal on 23.10.2023 i.e. after passing of more than eleven months.



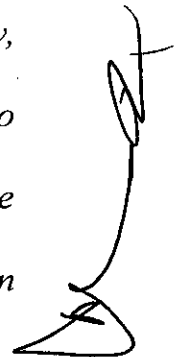
07. This case has to face the issue of limitation at two stages. One at the time of filing departmental appeal and second on filing of the instant appeal before this Tribunal.

08. Firstly, the appeal in hand is not competent in view of the judgment of the Supreme Court of Pakistan in 2007 SCMR 513 titled "Muhammad Aslam Vs. WAPDA and others", wherein, the Apex Court has held that:

"If departmental appeal was not filed within the statutory period, appeal before Service Tribunal would not be competent. Civil Servant was non-suited for non-filing of appeal within time, therefore, Supreme Court declined to interfere with the judgment passed by Service Tribunal. Leave to appeal was refused."

09. Secondly, the present service appeal has been filed beyond the provided period of limitation as the appellant has made representation on 25.08.2020, while the instant appeal has been filed on 23.10.2023. Section-4 of the Service Tribunal Act, 1974 gives the period for filing departmental appeal as thirty days. The same is reproduced below:

"4. Appeal to Tribunals.--- Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him [or within six months of the establishment of the appropriate Tribunal, whichever is later,] prefer an



appeal of the Tribunal having jurisdiction in the matter."

10. Besides, 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."

Service Appeal No.2098/2023 titled "Dr. Taj Nawaz Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and others". decided on 31.07.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Ms. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

11. In view of the above situation, instant service appeal, being barred by time, is dismissed with costs. Consign.

12. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 31st day of July, 2024.



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah