

06th March, 2024

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Ahmad Yar, Assistant Director (Litigation) for the respondents present.
2. Written reply on behalf of respondents has already been received. Let it be admitted to full hearing subject to all just and legal objections. The appellant is directed to deposit security fee within 10 days. To come up for arguments on 04.06.2024 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.

(Kalin Arshad Khan)
Chairman
Camp Court Swat

Naeem Amin 04.06.2024

1. Appellant present in person. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Former requested for adjournment on the ground that his learned counsel is busy before the Worthy Peshawar High Court, Peshawar. Last chance is given. To come up for arguments on 01.07.2024 before D.B at Camp Court, Swat. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (E)
Camp Court, Swat

(Rashida Bano)
Member (J)
Camp Court, Swat

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01st July, 2024

Appellant alongwith his counsel present. Mr. Umair Azam,
Additional Advocate General for the respondents present.

On previous date i.e 04.06.2024, last chance was given for
arguments. Today, learned counsel for the appellant is again seeking
further time for preparation of brief. Absolute last chance is given for
arguments. To come up for arguments on 02.09.2024 before the D.B
at Camp Court, Swat. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (Executive)
Camp Court, Swat

(Aurangzeb Khattak)
Member (Judicial)
Camp Court, Swat

Naeem Amin

S.A #.1334/2022

ORDER

2nd Sep. 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Ahmadyar Khan, Assistant Director for the respondents present. Heard.
2. Vide our detailed judgment of today placed on file, instant service appeal, being barred by time, is dismissed with costs. Consign.
3. *Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.*

(Rashida Bano)
Member (J)
Camp Court, Swat

(Kalim Arshad Khan)
Chairman
Camp Court, Swat

Mutazem Shah

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."

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 Swat and given under our hands and the seal of the Tribunal on this 2nd day of September, 2024.



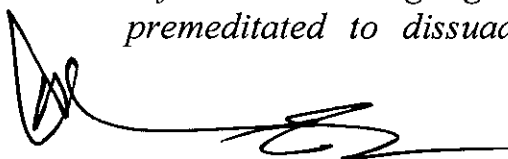
KALIM ARSHAD KHAN
Chairman
Camp Court, Swat



RASHIDA BANO
Member (Judicial)
Camp Court, Swat

Mutazem Shah

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



9. Secondly, the present service appeal has been filed beyond the provided period of limitation as the appellant has made representation on 04.10.2021, while the instant appeal has been filed on 30.08.2022. 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


extent but promotion was not given and in the meanwhile, he stood retired from service on 31.03.2018. In order to get promoted, he filed departmental appeal on 04.10.2021. When no response was made by the respondents, he approached this Tribunal on 30.08.2022.

6. The decision of the Departmental Promotion Committee was made on 04.05.2018, while the appellant filed departmental appeal 04.10.2021 (when more than three years had passed) and then he has filed the instant service appeal on 30.08.2022 i.e. after passing of more than ten months.

7. 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.

8. 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."



and was retired from service on 31.03.2018; that in the year 2017, vacancies for promotion from Assistant to the post of Assistant Director, Population Welfare were available; that ACRs of the appellant alongwith other colleagues were requisitioned; that the case of promotion was allegedly delayed till 04.05.2018 and on the said date, promotions of other Assistants were made, however, the appellant was not given any such promotion; that feeling aggrieved, he filed departmental appeal on 04.10.2021, but the same was not responded, hence, the instant service appeal.

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

3. We have heard learned counsel for the appellant, learned counsel for private respondent 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, for respondents, controverted the same by supporting the impugned order.

5. 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 Assistant (BPS-16) in the Population Welfare Department. For promotion to the next higher grade i.e. Assistant District Population Welfare Officer, vacancies were available and his case was processed to some

Service Appeal No.1334/2022 titled "Muhammad Anwar Khan Vs. Secretary to the Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat, Peshawar and others", decided on 02.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Swat.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR
AT CAMP COURT, SWAT

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.1334/2022

Date of presentation of appeal.....30.08.2022
Dates of Hearing.....02.09.2024
Date of Decision.....02.09.2024

Mohammad Anwar Khan, R/O Village Kheema, Tehsil and P.O Timargarah, District Dir Lower (Assistant BPS-16 retired from the office of District Population Welfare Office, Lower Dir).

.....*Appellant*

Versus

1. **Secretary to the Government of Khyber Pakhtunkhwa Population Welfare Department, Civil Secretariat, Khyber Pakhtunkhwa Peshawar.**
2. **Director General Population Welfare Department, Population Welfare Complex, Near PDA Building Hayatabad, Phase-V, Peshawar.**
3. **District Population Welfare Officer, Dir Lower.....(Respondents)**

Present:

Mr. Riaz Ahmad, Advocate.....For the appellant
Mr. Muhammad Jan, District AttorneyFor respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL (ACT 1 OF 1974) FROM THE ORDER BEARING NO.4(5)/2018 DATED 04.05.2018 WHEREBY ASSISTANTS BPS 16 WERE PROMOTED TO THE POST OF ASSISTANT DISTRICT POPULATION WELFARE BPS-16, WHERE THE ORDER BEING WAS DUE IN 2017.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case, as

per averments of appeal, are that appellant was serving as Assistant

