

*Service Appeal No.7765/2021 titled "Syed Qalander Shah, Clinical Technician (Pharmacy) (BPS-12). Civil Dispensary Gandigar, District Dir Upper. Vs. The Government of Khyber Pakhtunkhwa through Secretary Health, Peshawar and others". decided on 10.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

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

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

*Service Appeal No.7765/2021*

Date of presentation of appeal.....16.11.2021  
Dates of Hearing.....10.09.2024  
Date of Decision.....10.09.2024

**Syed Qalander Shah, Clinical Technician (Pharmacy) (BPS-12),  
Civil Dispensary Gandigar, District Dir Upper.....(Appellant)**

Versus

1. **The Government of Khyber Pakhtunkhwa** through Secretary Health, Peshawar.
2. **The Director General** Health Services, Khyber Pakhtunkhwa, Peshawar.
3. **The District Health Officer, District Dir Upper.....(Respondents)**

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellant  
Mr. Umair Azam, Additional Advocate General .....For respondents

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**APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
IMPUGNED INACTION OF THE  
RESPONDENTS BY NOT PLACING THE  
NAME OF THE APPELLANT IN THE LIST OF  
THE QUALIFIED DEGREE HOLDER AND  
NOT PROMOTING ON HIS TURN TO THE  
POST OF P.H.C TECHNOLOGIST (BPS-17)  
HAVING THE REQUISITE QUALIFICATION  
AND AGAINST NOT TAKING ACTION ON  
THE DEPARTMENTAL APPEAL OF THE  
APPELLANT WITHIN THE STATUTORY  
PERIOD OF NINETY DAYS.**

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## **JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Appellant's case in brief as per the memo and grounds of appeal are that he was appointed as Dispenser (BPS-06) vide order dated 29.01.2004; that in the seniority list his post was upgraded from BPS-06 to BPS-09 and then to BPS-12; that in the provisional seniority list, he was placed at Serial No.23 of the Qualified Paramedics Degree Holder P.H.C (Multi-Purpose) according to the date of acquiring of degree; that in the final seniority list, his name was not mentioned and was placed in the seniority list of the year 2020, of the Clinical Technicians (Pharmacy) at Serial No.1663; that feeling aggrieved, he filed departmental appeal but the same was not responded and many P.H.C Technicians were promoted vide order dated 01.09.2021, 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 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.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for 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, for respondents, controverted the same by supporting the impugned order.

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5. The appellant filed departmental appeal was filed on 13.11.2017 while this appeal has been filed on 16.11.2021, which is badly barred by time. There is no application for condonation of such delay nor the same has been explained in the appeal or during the arguments. In this respect, we 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*

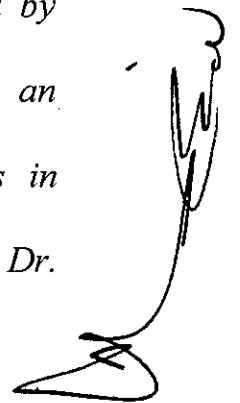
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person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention 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



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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.

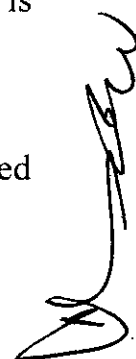


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*Muhammad Javaid Shafi Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence 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."*

6. So far as the issue to the extent of promotion is concerned, firstly, the appellant has not challenged any order specifically in this appeal. Secondly, in this appeal as well as in the departmental appeal the respondents have categorically stated that the appellant will be promoted on his turn as if he is senior to other colleagues, would be promoted.

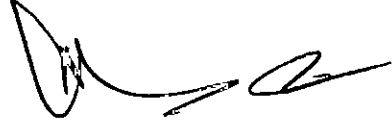
7. As regards his claim against the promotee, who is ranked senior in the seniority list, annexed by the appellant himself.



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8. In view of the above, instant service appeal is dismissed with costs. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10<sup>th</sup> day of September, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

*\*Mutazem Shah\**