

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

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

Service Appeal No.2593/2023

Date of presentation of Appeal.....04.12.2023
Date of Hearing.....24.09.2024
Date of Decision.....24.09.2024

Ajab Khan, Ex-Constable No.52, Police Post Taralla, District
Torghar.....(***Appellant***)

Versus

1. **The Provincial Police Officer**, Khyber Pakhtunkhwa, Peshawar.
2. **The Regional Police Officer**, Hazara Region, Abbottabad.
3. **District Police Officer**, Torghar.....(***Respondents***)

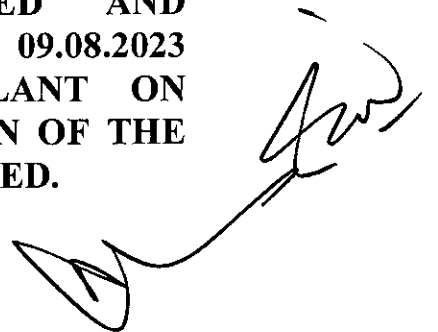
Present:

Mr. Muhammad Arshad Khan Tanoli, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney...For respondents

**SERVICE APPEAL UNDER SECTION 4 OF
THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER DATED 05.12.2022, WHEREBY THE
APPELLANT WAS DISMISSED FROM
SERVICE AGAINST THE ORDER DATED
25.05.2023 WHEREBY THE
DEPARTMENTAL APPEAL OF THE
APPELLANT WAS REJECTED AND
AGAINST THE ORDER DATED 09.08.2023
RECEIVED BY THE APPELLANT ON
07.11.2023, WHEREBY REVISION OF THE
APPELLANT WAS ALSO REJECTED.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Facts of the
case of the appellant, gathered from the memorandum and
grounds of appeal are that the he was serving as Constable
in the Police Department; that he allegedly fell ill and



remained unable to attend the duties; that upon recovery, he approached the office, where he was handed over the impugned order dated 05.12.2022, whereby he was dismissed from service; that feeling aggrieved, he filed departmental appeal followed by a revision petition under Rule-11 A of the Khyber Pakhtunkhwa Police Rules, 1975, but the same was rejected on 09.08.2023, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who 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 learned Deputy District Attorney 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 Deputy District Attorney, controverted the same by supporting the impugned order(s).

5. The appellant claims that he fell ill and was unable to perform his duties during his absence. Upon his recovery, he was unexpectedly presented with the impugned dismissal order dated 05.12.2022. Feeling aggrieved by this decision, the appellant filed a departmental appeal, followed by a revision petition under Rule-11 A of the Khyber



Pakhtunkhwa Police Rules, 1975. However, both efforts were failed his revision petition was rejected on 09.08.2023.

6. It is the case of the appellant that he was penalized by the departmental authorities on the sole ground of his absence from duty. Against the order dated 05.12.2022, no departmental appeal is found placed on file, however, the same is found to have been filed as shown in the appellate order dated 25.02.2023. A revision petition filed against the appellate order was dismissed on 09.08.2023 and the appellant has approached the Tribunal on 04.12.2023. Not only the departmental appeal is barred by time but also, the appeal before the Tribunal is also time barred.


7. 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.2593/2023 titled "Ajab Khan -vs- The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others" declared on 24.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Miss. Fareeha Paul, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

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

9. Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 24th day of September, 2024.



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

Mutazem Shah