

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.6616/2021

Date of presentation of appeal.....11.06.2021
Dates of Hearing.....02.10.2024
Date of Decision.....02.10.2024

Waqar Ahmad son of Pazir Gul resident of Amba Dher Mohallah
Gharib Abad Shabqadar District Charsadda.....(***Appellant***)

Versus

1. **Local Government and Rural Development Department Khyber Pakhtunkhwa**, through Secretary, Peshawar.
2. **Local Government and Rural Development Department Khyber Pakhtunkhwa** through Director General, Peshawar.
3. **Government of Khyber Pakhtunkhwa** through Advocate General, Peshawar.
4. **Assistant Director** Local Government and Rural Development Department Khyber Pakhtunkhwa, Charsadda and four (04) other private respondents.....(***Respondents***)

Present:

Mr. Zeeshan Khan Dawar, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For official respondents
Mr. Asif Ali Shah, Advocate.....For private respondents

**SERVICE APPEAL UNDER SECTION 4 OF
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT 1974 AGAINST THE IMPUGNED
NOTIFICATION DATED 24.11.2020, WHEREBY
THE RESPONDENT NO 6 TO 9 HAVE
ILLEGALLY BEEN PROMOTED AS ALL THESE
RESPONDENTS ARE NOT MEET WITH THE
REQUIRED QUALIFICATIONS AND THE NAME
OF THE APPELLANT HAS BEEN DROPPED AND
EVEN NOT CONSIDER FOR THE PROMOTION
AS JUNIOR VILLAGE COUNCIL SECRETARY,
THESE ACTS OF THE RESPONDENTS ARE
ILLEGAL, UNLAWFUL, WITHOUT LAWFUL
AUTHORITY AND ARE LIABLE TO BE
DECLARED SO, AND ACCORDINGLY THE
RESPONDENTS BE DIRECTED OFFICIAL TO
PROMOTE THE APPELLANT FOR THE POST**

**OF JUNIOR VILLAGE COUNCIL SECRETARY
W.E.F 24.11.2020.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant's case in brief, as per averments of appeal, is that the appellant was appointed as a Naib Qasid in the Respondents' Department on May 31, 2016, and is currently serving in the office of Respondent No. 5. The Respondents' Department amended its promotion rules, issuing a notification on October 16, 2019, which stipulated that 20% of promotions for Class-IV positions would be based on seniority among Naib Qasids and Chowkidars, provided they had the necessary qualifications, including a secondary education certificate and a six-month IT diploma. The appellant allegedly qualified as per criteria and was listed as eligible for promotion in the working paper prepared for the promotion of Junior Secretaries from BPS-09 to BPS-11, issued on October 22, 2020, where he ranked sixth in the seniority list. However, the promotion process favored other candidates, including Respondents No. 6 to 9, who did not meet the required qualifications. The Departmental Promotion Committee held a meeting on January 18, 2019, where all candidates with a third division were deemed ineligible, yet the appellant's subsequent applications challenging the promotion decisions yielded no results. He now appeals the decision, asserting that the promotion

committee failed to adhere to the established criteria as per the Local Government Act.

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, learned counsel for private respondents and learned District Attorney for official 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 District Attorney, assisted by private respondents' counsel, controverted the same by supporting the impugned order(s).

05. In this case, the appellant, appointed as a Naib Qasid on May 31, 2016, contends that he meets the qualifications required for promotion under the Respondents' Department's amended rules, which were implemented on October 16, 2019. Despite being listed as eligible for promotion to Junior Secretary, ranked sixth in the seniority list in the working paper dated October 22, 2020, he alleges that the promotion process favored other candidates who lacked the requisite qualifications. The Departmental Promotion Committee had previously ruled that candidates with a third division were ineligible, raising questions about the

fairness of the subsequent promotion decisions. The appellant's repeated challenges to the committee's decisions have been unsuccessful, prompting him to appeal on the grounds that the promotion committee did not adhere to the established criteria set forth in the Local Government Act, thereby undermining the principles of transparency and meritocracy in the promotion process.

06. The impugned order was passed on 24.11.2020 while the appellant had filed the departmental appeal on 12.01.2021 that is beyond the provided statutory period i.e. 90 days.

06. The departmental appeal of the appellant was barred by time as he did not file the same during the prescribed period. 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

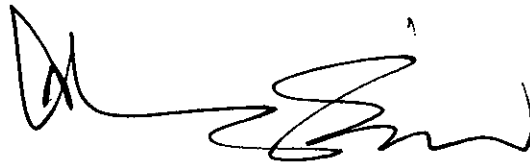
aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation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

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

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 2nd day of October, 2024.*



KALIM ARSHAD KHAN

Chairman



FAREEHA PAUL

Member (Executive)

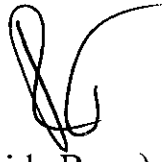
Mutazem Shah

26th Sept, 2024

Appellant in person present. Mr. Muhammad Jan, District Attorney for official respondents and learned counsel for private respondents are present.

Appellant seeks adjournment on the ground that his counsel left the court due to an emergency. Adjourned. To come up for arguments on 02/10/2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KIPST
IPES



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

S.A #.6616/2021

ORDER

2nd Oct. 2024

1. Mr. Zeeshan Khan Dawar, Advocate learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for official respondents present. Mr. Asif Ali Shah, Advocate for private 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 Peshawar and given under our hands and the seal of the Tribunal on this 2nd day of October, 2024.*



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman

Mutazem Shah