

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No.7815/2021

Date of presentation of appeal.....12.11.2021
Dates of Hearing.....02.10.2024
Date of Decision.....02.10.2024

Shahzad Jamal, son of Mukhtiar Khan, Ex-Constable No.2784,
Capital City Police, Peshawar.....(*Appellant*)

Versus

1. **Superintendent of Police Hqr: Peshawar.**
2. **Capital City Police Officer, Peshawar.**
3. **Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.**
.....(*Respondents*)

Present:

Mr. Arbab Saiful Kamal, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST OB NO.1803 DATED 29.07.2020 OF R. NO.01 WHEREBY APPELLANT WAS DISMISSED FROM SERVICE AND PERIOD OF ABSENCE WAS TREATED AS WITHOUT PAY OR OFFICE ORDER NO.2798-2801/PA DATED 09.09.2021 OF R. NO. 02, WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED/FILED OR OFFICE ORDER NO.S/3811 DATED 25.10.2021 OF R.NO.03, WHEREBY NO INTERFERENCE WAS MADE IN THE AFORESAID ORDERS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant's case in brief, as per averments of appeal, is that he was appointed as Constable in the Police Department; that due to his alleged illness,

he remained unable to attend the duties; that show cause notice was issued and inquiry was ordered to be conducted; that after issuance of final show cause notice, he was dismissed from service on 29.07.2020 and the period w.e.f 23.05.2019 to 06.12.2019 and from 05.06.2020 till 28.07.2020 was treated as leave without pay; that feeling aggrieved, he filed departmental appeal on 26.07.2021 but the same was rejected on 25.10.2021, hence this 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 the 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 controverted the same by supporting the impugned order(s).

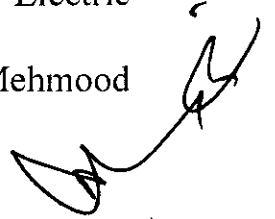
05. In the present case, the appellant, a Constable in the Police Department, was dismissed from service on July 29, 2020. Appellant asserted that his inability to attend duties due to illness led to the issuance of a show cause notice and the initiation of an inquiry. Subsequently, he faced final show cause notice before his dismissal, with specific periods treated as leave without pay.

Following the rejection of his departmental appeal filed on July 26, 2021, on October 25, 2021, he now seeks redress through this appeal, arguing that the procedural and substantive aspects of the disciplinary action taken against him warrant reconsideration.

06. The original order of his dismissal from service was passed on 27.09.2020 against which he filed departmental representation on 26.07.2021 (after passage of ten months), however the same was rejected on 09.09.2021 and against the said appellate order, he has filed the instant appeal on 12.11.2021 that is also beyond the provided statutory period i.e. 30 days.

07. The departmental appeal of the appellant as well as service appeal of the appellant were 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 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."

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

09. *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

25th Sept, 2024

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant seeks further time for preparation of arguments. Granted. To come up for arguments on 02/10/2024 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar



(Rashida Bano)
Member (Judicial)



(Aurangzeb Khattak)
Member (Judicial)

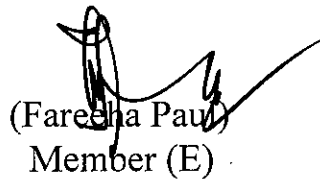
Naeem Amin

S.A #.7815/2021

ORDER

2nd Oct. 2024

1. Mr. Arbab Saiful Kamal, Advocate learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for 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

