

Service Appeal No.7791/2021 titled "Shamsher Ali versus The Secretary Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal No.7792/2021 titled "Zahiq Hussain The Secretary Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar and others" and Service Appeal No.7793/2021 titled "Muhammad Sajid The Secretary Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar and others" declared on 04.10.2024 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.7791/2021

Date of presentation of Appeal.....26.11.2021
Date of Hearing.....04.10.2024
Date of Decision.....04.10.2024

Mr. Shamsher Ali, Junior Village Secretary (BPS-09), VC Khan Gari, Tehsil Batkhela, District Malakand.....(**Appellant**)

Versus

1. **The Secretary** Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Director General** Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Assistant Director General** Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
.....(**Respondents**)

Service Appeal No.7792/2021

Date of presentation of Appeal.....26.11.2021
Date of Hearing.....04.10.2024
Date of Decision.....04.10.2024

Mr. Zahiq Hussain, Junior Village Secretary (BPS-09), VC Qalangi, Tehsil Batkhela, District Malakand.....(**Appellant**)

Versus

1. **The Secretary** Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Director General** Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Assistant Director General** Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
.....(**Respondents**)

Service Appeal No.7793/2021

Date of presentation of Appeal.....26.11.2021
Date of Hearing.....04.10.2024
Date of Decision.....04.10.2024

Mr. Muhammad Sajid, Junior Village Secretary (BPS-09), VC Mubarak Kheil, Tehsil Batkhela, District Malakand.....(**Appellant**)

Versus



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1. **The Secretary Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.**
 2. **The Director General Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.**
 3. **The Assistant Director General Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.**
-(**Respondents**)

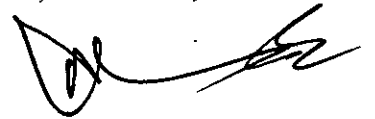
Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellants
Mr. Muhammad Jan, District Attorney.....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERS DATED 07.08.2018 OF THE RESPONDENTS WHEREBY THE APPELLANTS WERE PROMOTED TO THE POST OF JUNIOR VILLAGE SECRETARIES BPS-09 WITH IMMEDIATE EFFECT AND NOT W.E.F 11.04.2015 I.E. WHEN THE POST OF VILLAGE SECRETARY WAS ADVERTISED FOR INITIAL RECRUITMENT AND ALSO AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEALS OF THE APPELLANTS WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above three appeals, are jointly taken up, as all are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.



02. Appellants' cases in brief, as per averments of appeals are that they were appointed as Class-IV (BPS-02) in the respondent department; that according to the Service Rules notified on 26.01.1978, 20% (now 30%) was allocated for Class-IV employees to the post of Junior Clerk (BPS-07); that after creation

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of post of Secretary (BPS-06) the same were lying vacant, and they were allegedly entitled under the 30% quota for promotion against the said post; that being hopeful for promotion, the said post of Village Secretary was advertised for initial appointment; that feeling aggrieved, the filed departmental appeals followed by service appeal No.1157/2015 which was disposed of vide judgment dated 03.01.2017; that in the light of the judgment, the department notified new service rules, whereby, promotion quota had been allocated for class-IV employees; that they were promoted vide impugned order dated 07.08.2018, however, the said promotion to the post of Junior Village Secretary (BPS-09) was given immediate effect and not from the date of advertisement of the post i.e. 11.04.2015; feeling aggrieved, they filed departmental appeals but the same remained un-responded, hence, the instant service appeals.

03. The basic issue involved in these cases is that the appellants were qualified and eligible to the post of Junior Village Secretary and the Department accordingly promoted them. However, main claim of the appellants is that they ought to have been given antedated promotion vide impugned order dated 07.08.2018 i.e. from the date of advertisement of the post which is 11.04.2015. The said order has been assailed by departmental appeals followed by the instant service appeals.

04. On receipt of the appeals and their admission to full hearing, the respondents were summoned who put appearance and

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contested the appeals by filing replies. The defense setup was a total denial of the claim of the appellants.

05. We have heard learned counsel for the appellants and learned District Attorney for respondents and some private respondents.

06 The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned District Attorney District Attorney controverted the same by supporting the impugned order(s).

07. The original order of promotion was passed on 07.08.2018 against which they filed departmental appeals on 02.08.2021 (after passage of two years and five months).

08. The departmental appeals of the appellants are barred by time as they 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

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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

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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."

09. In view of the above, instant service appeals, being barred by time, are dismissed with costs. Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 4th day of October, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah

S.A #.7791/2021


ORDER

4th Oct. 2024

1. Learned counsel for the appellant and Mr. Muhammad Jan, District Attorney for respondents present. Heard.
2. Vide our consolidated judgment of today placed on file, instant service appeal, being barred by time, is dismissed with costs. Copy of the judgment be placed on file of connected appeals. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 4th day of October, 2024.*



(Rashida Bano)
Member (J)



(Kalim Arshad Khan)
Chairman

Mutazem Shah