



S.A #.2319/2021

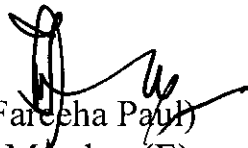
**ORDER**

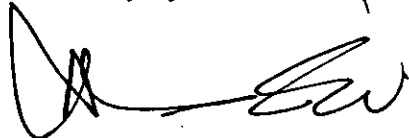
7<sup>th</sup> Oct. 2024

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

2. Vide our consolidated order of today, 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 7<sup>th</sup> day of October, 2024.*

  
(Fareeha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*

*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 Javid 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 7<sup>th</sup> day of October, 2024.



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)

*"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,*



05. In the present case, the appellant was appointed as a Lecturer in 2002 and subsequently promoted to Assistant Professor in 2008. As of December 31, 2019, he held the third position on the seniority list. During a Promotion Selection Board meeting in May 2018, junior colleagues were promoted to Associate Professor, while the appellant was deferred due to not completing mandatory training. In response, he completed the required six-month Technical Teachers Training Course in February 2019 and requested promotion before his impending retirement on June 9, 2020. Despite his qualifications and timely completion of the training, he retired without being promoted to BPS-19. Following an unaddressed departmental appeal in September 2020, the appellant filed the current service appeal, seeking redress for his denied promotion.

06. The promotion of his colleagues took place on 21.05.2018 and he was deferred, against which he filed departmental representation on 21.09.2020 (after passage of more than two years), which was badly barred by time.

07. 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:

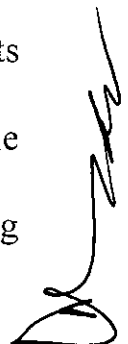


that in the meeting of PSB held on 21.05.2018, alleged junior colleagues were promoted to the post of Associate Professor (BPS-19) while the appellant was left on the ground of being not undergone mandatory training for promotion; that he approached the department to allow him for going through the mandatory training for promotion and accordingly he completed the said six months Technical Teachers Training Course on 22.02.2019; that after completion of the said training, he requested the department for granting him promotion as he was going to be retired on 09.06.2020; that he was retired from service on 09.06.2020 in BPS-18 without promotion to BPS-19, therefore, he filed departmental appeal on 21.09.2020 but the same was not responded, hence, the instant service 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).



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

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

***Service Appeal No.2319/2021***

Date of presentation of appeal.....20.01.2021  
Dates of Hearing.....07.10.2024  
Date of Decision.....07.10.2024

**Ahmad Syed Associate Professor (Mechanical) Retired,**  
**Government College of Technology, Swat.....(Appellant)**

**Versus**

1. **Secretary Industries, Commerce and Technical Education Department, Khyber Pakhtunkhwa, Peshawar.**
2. **Managing Director K.P TEVTA House No.5-771, Old Bara Road, University Town, Peshawar.**
3. **Director HR, Khyber Pakhtunkhwa TEVTA, University Road, Peshawar.....(Respondents)**

Present:

Mr. Suleman Khan, Advocate.....For the appellant

Mr. Muhammad Jan, District Attorney.....For respondents

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**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 WHEREAS THE APPELLANT DENIED PRO-FORMA PROMOTION, AGAINST WHICH THE DEPARTMENTAL APPEAL DATED 21.09.2020, NOT RESPONDED EVEN AFTER LAPSE OF STATUTORY PERIOD OF 90 DAYS.**

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**JUDGMENT**



**KALIM ARSHAD KHAN CHAIRMAN:** Appellant's case in brief, as per averments of appeal, is that he was appointed as Lecturer (BPS-17) in the year 2002 and was promoted to the post of Assistant Professor (BPS-18) on 01.03.2008; that as per seniority list dated 31.12.2019, the appellant was at Serial No.3;