

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 418/2022

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Farman Ali Shah, Ex-Constable No. 1172, Police Line, Bannu.

.... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Mardan Region Mardan.
3. District Police Officer, Bannu.

....(Respondent)

Mr. Taimur Ali Khan,
Advocate

... For appellant

Mr. Naseerud Din Shah
Assistant Advocate General

... For respondents

Date of Institution..... 17.03.2022
Date of Hearing.....28.10.2024
Date of Decision..... 28.10.2024

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 05.07.2010, whereby the appellant was dismissed from service. It has been prayed that on acceptance of the appeal, the order dated 05.07.2020 might be set aside and the appellant might be reinstated into service with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.



02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in the respondent department in the year 2003. While serving in the said capacity, he faced some domestic problems due to which he was compelled to remain absent from his duty. Ex-parte proceedings were initiated against him and he was dismissed from service from the date of absence, vide order dated 05.07.2010. Feeling aggrieved, he filed departmental appeal on 16.04.2013 but no action was taken on it. Then he submitted revision petition on 08.12.2021 under Rule 11-A of the Khyber Pakhtunkhwa Police Rules 1975 which was not responded within the statutory period; hence the instant service appeal.

03. Respondents were put on notice who submitted their joint written reply/comments. We heard the learned counsel for the appellant as well as learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

04. Learned counsel for the appellant, after presenting the case in detail, argued that no charge sheet alongwith statement of allegations was served upon the appellant nor he was associated in the inquiry proceedings and even the inquiry report was not provided to him. No show cause notice was served upon him nor any opportunity of personal hearing was afforded by the competent authority and he was dismissed from service. He further argued that absence of the appellant was not willful but for the reason which was beyond his control. On the point of limitation, he argued that since the impugned order was void, hence no limitation ran against such orders. He requested that the appeal might be accepted as prayed for.

05. Learned Assistant Advocate General, while rebutting the arguments of



learned counsel for the appellant, argued that the appellant was a habitual absentee and did not pay any heed towards his official duty. He argued that appellant did not face any domestic problem but he went abroad during the time of militancy. Learned AAG further argued that the appellant absented himself from official duty without any cogent reason and prior permission of the competent authority and after observing all codal formalities, he was dismissed from service by the competent authority. He requested that the appeal might be dismissed.

06. Arguments and record presented before us transpired that that the appellant was proceeded against departmentally on the charge of absence from duty. An inquiry was conducted according to which the charge of absence was proved and based on that, order of dismissal from service of the appellant was issued on 05.07.2010, against which departmental appeal was preferred by the appellant on 16.04.2013, which was time barred. Even after that, instead of waiting for 90 days provided under the law/rules and then coming to this Tribunal, the appellant kept mum for more than eight years and preferred a mercy petition against the order of dismissal from service, on 08.1.2021 after which he preferred the instant service appeal on 17.03.2022. The application for condonation of delay attached with the service appeal did not give any cogent reason for delayed submission of the instant service appeal rather it emphasises on the impugned order being void and that no limitation runs against a void order. Here we would like to refer to the judgment of august Supreme Court of Pakistan dated 03.10.2022 titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala Versus Khalid Mehmood and others" passed in Civil Appeals No. 1685 to 1687 of 2021 has held as follows:-



“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 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 Khudaded 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."


07. In view of the above, there is no doubt that the appellant slept over his right to file appeal, first before the departmental authority and then before the Service Tribunal, within the prescribed time provided under the relevant laws/rules and submitted both the appeals at much belated stage.



08. In view of the above discussion, the service appeal preferred before the Service Tribunal is not sustainable and is, therefore, dismissed being badly time barred. Cost shall follow the event. Consign.

09. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 28th day of October, 2024.*


(FAREEHA PAUL)
Member (E)


(AURANGZEB KHATTAK) 28/10
Member (J) 2024.

Fazle Subhan P.S

MEMO OF COSTS.
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 418/2022

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.... (Appellant)

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... For appellant

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Assistant Advocate General

... For respondents

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Appellant	Amount	respondents \	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal.	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Services of processes	Rs. Nil	3. Services of processes	Rs. Nil
4. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
5. Security fee	Rs. 100/-	5. Security Fee	Rs. Nil
6. Profess fee	Rs. Nil	6. Process fee	Rs. Nil
7. Costs	Rs. Nil	7. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note:- Counsel Fee is not allowed as the required certificate has not been furnished

Given under our hands and the seal of this Court, this 28th day of October, 2024.


(FARBEHA PAUL)
Member (E)




(AURANGZEB KHATTAK)
Member(J)
28.10.
2024.

Fazle Subhan, P.S

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. **418** of **2022**

Farman Ali Shah Versus Provincial Police Officer, Khyber
Pakhtunkhwa Peshawar and two other.

S.No. of Order & Date of proceedings	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
Order-17 28 th October, 2024	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Taimur Ali Khan, Advocate on behalf of the appellant.2. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents. <p>01. Vide our detailed judgment consisting of 07 pages, the service appeal preferred before the Service Tribunal is not sustainable and is, therefore, dismissed being badly time barred. Cost shall follow the event. Consign.</p> <p>02. <i>Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 28th day of October, 2024.</i></p> <p> (FARZEHA PAUL) Member (E)</p> <p> (AURANGZEB KHATTAK) Member (J)</p> <p>*Fazle Subhan, P.S*</p>