

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER (Executive)**

Service Appeal No.867/2022

Date of presentation of Appeal.....01.06.2022
Date of Hearing.....24.10.2024
Date of Decision.....24.10.2024

Wajid Ali son of Malik Ahmad Jan Shah R/O Lakhri Khel, Naway Kalay, P.O Kalya Zairah Tehsil Lower District Orakzai
.....(*Appellant*)

Versus

1. **Superintendent of Police, District Orakzai.**
2. **Deputy Inspector General of Police, District Orakzai.**
3. **Deputy Inspector General of Polices, Services, Rules and Regulation Department, Peshawar.**
4. **Deputy Commissioner, District Orakzai.**
5. **Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.**
6. **Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.....(Respondents)**

Present:

Mr. Muhammad Asif, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE TERMINATION ORDER DATED 23.11.2016 ISSUED BY THE THEN POLITICAL AGENT ORAKZAI WHEREBY APPELLANT WAS TERMINATED FROM SERVICE WITHOUT ANY REASON, SHOW CAUSE NOTICE OR INQUIRY ETC. IE WITHOUT FOLLOWING THE SERVICE RULES, LAWS AND REGULATION AND AGAINST THE ORAL REFUSAL OF RESPONDENTS WHEREBY DEPARTMENTAL APPEAL FILED BY THE APPELLANT HAS NOT BEEN DECIDED WHILE THREE MONTHS HAVE BEEN PASSED.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was appointed in Levies Force in the year 1981/1982 was serving in the said department; that his son was charged in a criminal case in which he (appellant's) son was ordered for fine of Rs.200,000/-; that vide impugned order dated 23.11.2016, he was terminated from service on the charges of involvement in the criminal activities; that feeling aggrieved, he filed appeal to Political Agent on 13.12.2016, then on 24.04.2017, he moved application to the Secretary SAFRON but in vain; that he again filed representation to the Political Agent on 16.11.2017 but the same was not replied; that he approached respondent No.4 by filing an appeal, wherefrom, he was allegedly informed that he should approach respondent No.1 i.e. Superintendent of Police, District Kurram, which appeal was also filed; that he also made written request to respondent No.2 on 24.02.2022 but no response was made, therefore, he preferred the instant service appeal on 01.06.2022.

2. 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.

3. We have heard learned counsel for the appellant and learned District Attorney for respondents.

4. 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).

5. The appellant was terminated from service on the ground of involvement in the criminal activities. The said order of termination has been assailed by him before various fora, i.e. Political Agent, Secretary SAFRON, again before Political Agent, S.P and lastly, being hopeless of all the forums, he approached the Tribunal by filing the instant service appeal.

6. The appellant has wasted his time in pursuing his case before the wrong fora and has approached this Tribunal through this appeal after a lapse of more than five years and six months, which is hopelessly barred by time. 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 Ifikhar 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."

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

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24th day of October, 2024.*



KALIM ARSHAD KHAN

Chairman



MUHAMMAD AKBAR KHAN

Member (Executive)

Mutazem Shah

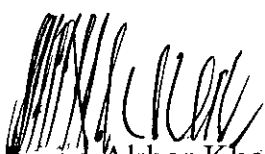
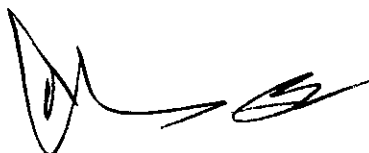
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 867/2022

Wajid Ali

versus

Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p>Order-18 24th October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Asif, Advocate on behalf of appellant.2. Mr. Muhammad Jan, District Attorney for the respondents. <p><u>Kalim Arshad Khan, Chairman:</u> Vide our detailed judgment of today, placed on file, instant service appeal being barred by time, is dismissed with costs. Consign.</p> <p>2. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 24th day of October, 2024</i></p> <div style="display: flex; justify-content: space-around; align-items: center;"><div style="text-align: center;"> (Muhammad Akbar Khan) Member (E)</div><div style="text-align: center;"> (Kalim Arshad Khan) Chairman</div></div> <p><small>*Mutazem Shah*</small></p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.867/2022

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PRESENT

1. Mr. Muhammad Asif, Advocate, for the Appellant
2. Mr. Muhammad Jan, District Attorney for respondents

Appellants	Amount	Respondent	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. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. 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 24th day of October 2024.


Muhammad Akbar Khan
Member (Executive)


Kalim Arshad Khan
Chairman