

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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

*Service Appeal No.1183/2022*

Date of presentation of Appeal.....28.07.2022  
Date of Hearing.....24.10.2024  
Date of Decision.....24.10.2024

**Sami Ullah Khan** S/O Yousaf Ullah Khan R/O Jahangir Laluzai  
Surani Tehsil & District Bannu.....(*Appellant*)

Versus

1. **District Education Officer (Male)** Bannu.
2. **Principal** Government Higher Secondary School Sikander Khel Bala  
Bannu.....(*Respondents*)

Present:

Mr. Bashir Khan Wazir, 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 IMPUGNED ORDER  
DATED 08.02.2017, WHEREBY THE APPELLANT  
WAS IMPOSED MAJOR PENALTY OF REMOVAL  
FROM SERVICE AGAINST WHICH THE  
DEPARTMENTAL APPEAL WAS FILED, WHICH  
WAS REJECTED BY RESPONDENTS ON 07.07.2022.**

**JUDGMENT**

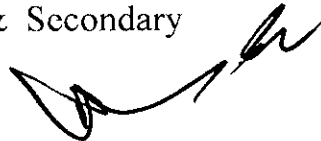
**KALIM ARSHAD KHAN, CHAIRMAN:** Brief facts of the case,  
as per averments of the appeal, are that appellant was appointed as  
Chowkidar in the Education Department; that after serving for three  
months, one Waqas Khan, showing himself to be the owner of the  
school, allegedly restrained the appellant from his duty by threatening  
him of dire consequences; that due to the said reason, he remained

unable to attend his duties; that in a Civil Suit, filed by that Waqas Khan, appellant was arrayed as defendant; that in the meanwhile, Waqas Khan was appointed and the appellant was terminated from service; that he allegedly made various applications for providing termination order but failed; that allegedly, after lapse of 10 months, the appellant received his termination order dated 08.02.2017; that the said order was assailed by the appellant through Writ Petition before the Hon'ble Peshawar High Court, Bannu Bench by filing Writ Petition No.879-B of 2017 which was dismissed that he ought to have approached the proper forum, vide judgment dated 26.05.2022; that during the pendency of the mentioned writ petition, the appellant allegedly made applications for his reinstatement, however, he was told that his case was pending before the Hon'ble Peshawar High Court; that after the decision of writ petition by the Hon'ble Peshawar High Court, the appellant again moved departmental appeal, which was rejected on 07.07.2022, therefore, he filed the instant service appeal.

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 absence from duty. His absence was admitted as he contended that Waqas Khan, owner of the school had threatened him for dire consequences in case of his attending the school. However, the respondents marked him absence and on the said ground, he was terminated from service vide order dated 08.02.2017. He filed departmental appeal before the Director Elementary & Secondary Education, Khyber Pakhtunkhwa on 11.03.2017. 

6. First stance of the appellant that he had been informed regarding his termination after 10 months, while the appellant filed application against the same after a month i.e. on 11.03.2017. However, instead of approaching this Tribunal, he knocked at the door of the Hon'ble Peshawar High Court, which effort bore no fruit, rather wasted his time and after filing second departmental appeal (which is not recognized in law), has approached this Tribunal 28.07.2022 after a lapse of more than five years. Even if the stance of the appellant that he had received the impugned order after passage of ten months (although not acceptable), is considered, nonetheless, law of limitation does not weigh the appeal in hand, as the same is 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 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 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."*

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 24<sup>th</sup> day of October, 2024.



**KALIM ARSHAD KHAN**

Chairman



**MUHAMMAD AKBAR KHAN**

Member (Executive)





**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No.1183/2022

Sami Ullah Khan

versus

Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
Order-25 24 <sup>th</sup> October, 2024.	<p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Bashir Khan Wazir, Advocate on behalf of appellant.</li><li>2. Mr. Muhammad Jan, District Attorney for the respondents.</li></ol> <p><b><u>Kalim Arshad Khan, Chairman:</u></b> 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 24<sup>th</sup> 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.1183/2022**

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District Bannu.....(Appellant)**

**Versus**

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 08.02.2017, WHEREBY THE APPELLANT WAS IMPOSED MAJOR PENALTY OF REMOVAL FROM SERVICE AGAINST WHICH THE DEPARTMENTAL APPEAL WAS FILED, WHICH WAS REJECTED BY RESPONDENTS ON 07.07.2022.

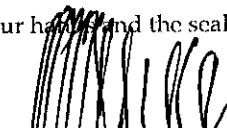
**PRESENT**

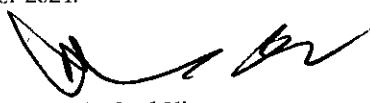
1. Mr. Bashir Khan Wazir, Advocate, for the Appellant
2. Mr. Muhammad Jan, District Attorney for respondents

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
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

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 24<sup>th</sup> day of October 2024.

  
Muhammad Akbar Khan  
Member (Executive)

  
Kalim Arshad Khan  
Chairman