

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

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

Service Appeal No.1612/2022

Date of presentation of appeal11.11.2022
Dates of Hearing.....22.10.2024
Date of Decision.....22.10.2024

Mr. Muhammad Subhan, Ex DSP (BPS-17), CTD District Lakki Marwat, Bannu Region.....(Appellant)

Versus

1. **The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.**
 2. **The Additional Inspector General (Establishment), Peshawar.**
 3. **The Regional Police Officer, Bannu Region at Bannu.**
 4. **The District Police Officer, District Lakki Marwat.**
-(Respondents)

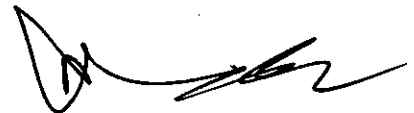
Present:

Mr. Umar Farooq, Advocate.....For appellant.

Mr. Naseer Ud Din Shah,
Assistant Advocate General.....For respondents.

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER DATED 20.10.2016 WHEREBY THE APPELLANT HAS BEEN COMPULSORY RETIRED FROM SERVICE AND AGAINST INACTION OF THE RESPONDENTS BY NOT DECIDING THE REVIEW PETITION/DEPARTMENTAL APPEAL WITHIN THE STATUTORY PERIOD OF NINETY DAYS.
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JUDGMENT



KALIM ARSHAD KHAN CHAIRMAN: Brief facts gathered from the memo and grounds of appeals are that the appellant served the department faithfully throughout his career, with no complaints lodged against him. In



2016, he participated in a police raid leading to FIR No. 438, but was allegedly falsely implicated during the investigation; that a fact-finding inquiry was conducted; however, that was insufficient and did not follow proper procedures. The appellant raised objections regarding the appointed inquiry officer due to perceived bias; that an order was issued on October 20, 2016, imposing compulsory retirement without allowing the appellant a chance for a personal hearing, thereby denying him due process; that importantly, the Anti-Terrorism Court discharged the appellant on June 22, 2022, due to a lack of evidence, establishing that no case could be made against him; that following this discharge, the appellant filed a Review Petition on July 15, 2022, challenging the earlier order. This petition has not been resolved within the statutory ninety-day period; that aggrieved by these developments and having exhausted other remedies, the appellant has filed the present 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 defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

4. It appears that the appellant being involved in a case registered vide FIR No. 438 dated 20.07.2016 under Sections-15AA and 9A CNSA, was proceeded and was awarded major penalty of compulsory retirement from service vide order dated 20.10.2016; that the appellant was discharged by the Competent Anti-Terrorism Court, Bannu on 22.06.2022 which gave the

appellant fresh cause of action against the order dated 20.10.2016, whereby the appellant was compulsorily retired and he preferred revision petition/departmental appeal on 15.07.2022, which was not responded, hence, this appeal.

5. We find that the appellant has misguided this Tribunal by making reference to FIR No. 438 dated 20.07.2016 registered by the Police Station Asmat Ullah Shaheed (Norang) District Lakki Marwat under Sections-5AA-9A CNSA and saying that the impugned order of compulsory retirement of the appellant was passed because of his alleged involvement in FIR No. 438 of 2016 and that he was discharged by the learned Judge ATC, Bannu on 22.06.2022 but when we perused the impugned order dated 20.10.2016, whereby the appellant was compulsorily retired from service on the ground that he was carrying a stinking reputation and was instead involved in FIR No.539 dated 09.12.2011 under Section-155 Police Order 2002 Police Station Yaqoob Khan Shaheed, District Karak. The departmental proceedings culminating into compulsory retirement of the appellant were initiated on the above two allegations i.e. possessing stinking reputation and involvement in FIR No. 539 at District Karak and not because of the involvement of the appellant in FIR No. 438 registered at Police Station Asmat Ullah Shaheed (Norang) District Lakki Marwat, as alleged by the appellant so the act of misleading the court has not only disintitiled the appellant for the desired relief on this score alone but also has constrained us to imposed special compensatory cost of Rs. 20000/- upon the appellant.

6. Now let us discuss the limitation in this case that the impugned order was passed on 20.10.2016 while departmental appeal was preferred on

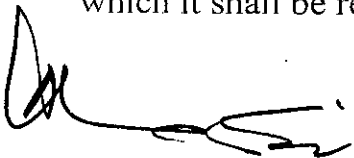


15.07.2022, which is hopelessly barred by time rendering this appeal incompetent in view of the judgment of august Supreme Court of Pakistan reported as 2023 SCMR 291 titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala versus Khalid Mehmood and others" the relevant para is reproduced 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 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. The appeal is therefore, dismissed with special compensatory cost of Rs. 20000/- which shall be paid by the appellant within thirty/ days, failing which it shall be recovered as arrears of land revenue



8. Before parting with we expect from the learned counsel for the appellant to act fairly by stating actual facts, avoiding any misguiding and misleading stances. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22nd day of October, 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Adnan Shah, PA


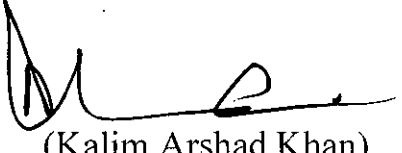
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1612/2022

Muhammad Subhan

versus

Police Department

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
Order-16 22 nd October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Umar Farooq, advocate on behalf of the appellant.2. Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents.3. Vide our detailed judgment of today placed on file, The appeal is therefore, dismissed with special compensatory cost of Rs. 20000/- which shall be paid by the appellant within thirty days, failing which it shall be recovered as arrears of land revenue. Costs shall follow the event. Consign.4. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 22nd day of October, 2024. <p style="text-align: center;"> (Muhammad Akbar Khan) Member (E)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><i>*Adnan Shah*</i></p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1612/2022

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PRESENT


1. Mr. Umar Farooq, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General 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. 20000	6. Costs	Rs. Nil
Total	Rs. 20100/-	Total	Rs. Nil

- Note: 1. Counsel Fee is not allowed as the required certificate has not been furnished.
2. Costs of Rs. 20000/- shown above imposed upon the appellant are to be recovered in the manner as stated in the judgment.

Given under our hands and the seal of this Court, this 23rd day of October 2024.


Muhammad Akbar Khan
Member (Executive)


Kalim Arshad Khan
Chairman