

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service appeal No. 1887/2024

Hassan 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
Order-02 29 th October, 2024.	<p><u>KALIM ARSHAD KHAN CHAIRMAN:-</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Ali Qazi, Advocate on behalf of the appellant.2. The key details of the case are as follows: The appellant was appointed as a Constable on December 31, 2019. On May 2, 2023, he received a major penalty of dismissal from service due to allegations that, after being transferred to D.I. Khan based on a complaint, he failed to report to his new posting and was absent from his official duties from October 29, 2022, until his dismissal on May 2, 2023, without sanctioned leave or notification. The appellant submitted a departmental appeal on May 20, 2024, which was rejected on July 19, 2024, leading to the current service appeal.3. Arguments have been heard and record perused.4. The appellant was dismissed from service on May 2, 2023, and subsequently filed a departmental appeal on May 20, 2024, which was rejected on July 19, 2024.5. According to Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appellant was required to submit his departmental appeal within thirty days of the impugned order.

Hassan Ali versus Government of Khyber Pakhtunkhwa

However, he filed it more than a year later, which is beyond the allowed time frame.

6. The departmental appeal of the appellant is barred by time as he did not file the same within 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:

"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

29/11/24

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service appeal No. 1887/2024

Hassan Ali versus

Government of Khyber Pakhtunkhwa

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

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

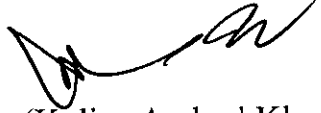
Service appeal No. 1887/2024

Hassan Ali versus Government of Khyber Pakhtunkhwa

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 in limine. Consign.

8. *Pronounced in open court at camp court Abbottabad and given under my hand and seal of the Tribunal on this 29th day of October, 2024.*


(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

Adnan Shah