

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
RASHIDA BANO ... **MEMBER (Judicial)**

Service Appeal No.918/2022

Date of presentation of Appeal.....30.05.2022
Date of Hearing.....29.10.2024
Date of Decision.....29.10.2024

Saima Naz d/o Muhammad Irfan Secondary School Teacher
Government Girls Community Model School Faqirabad Tajal,
Mansehra.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary, Peshawar.
2. **Secretary to Government of Khyber Pakhtunkhwa** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
4. **District Education Officer (Female)** Mansehra.
5. **Farzana Shafi**, S.S Biology (BPS-17), GGHSS Ghari Phulgram, Abbottabad.
6. **Zaibun Nisa** S.S Biology (BPS-17), GGHSS Odigram Swat.
7. **Romana Aslam** S.S Biology (BPS-17), GGHSS Sufaid Sang, Peshawar.
8. **Shela Sarwar** S.S Biology (BPS-17), GGHSS Cmpi Peshawar.
9. **Miss Amina Khan** S.S Biology (BPS-17), GGHSS Havelian.
10. **Zahida Bibi** S.S Biology (BPS-17), GGHSS No.2 Pabbi, Nowshera.
11. **Saima Sultan** S.S Biology (BPS-17), GGHSS Badabera, Peshawar.
12. **Robina**, S.S Biology (BPS-17), GHSS Totano Banda Swat.
13. **Shakira Aziz** S.S Biology (BPS-17), GGHSS Ghala Der Mardan.
14. **Rafaqat Ara** S.S Biology (BPS-17), GGHSS Shaidy Nowshera
15. **Neelam** S.S Biology (BPS-17), GGHSS Jhandar, Par Mardan.
16. **Bushra Jehan** S.S Biology (BPS-17), GGHSS Terri Karak.
17. **Sajida** S.S Biology (BPS-17), GGHSS Esak Chountra Karak.
18. **Rahat Maheen** S.S Biology (BPS-17), GGHSS Titter Khail, Lakki Marwat.
19. **Gul Naz** S.S Biology (BPS-17), GGHSS Shewa Swabi.
20. **Mst. Khadija Bibi** S.S Biology (BPS-17), GGHSS Sheyaqotak Chitral.
21. **Uzma Zeb** S.S Biology (BPS-17), GGHSS Shinkiarri Mansehra.
22. **Amina Khaton** S.S Biology (BPS-17), GGHSS Kala Kally Swat
23. **Zeenat Jehan** S.S Biology (BPS-17), GGHSS Parkho Dheri Mardan.
24. **Mst. Ishrat Farid** S.S Biology (BPS-17), GGHSS Odigram Swat.

25. **Tabassum Naz** S.S Biology (BPS-17), GGHSS Shahbaz Garhi Mardan.
26. **Hajira Bibi** S.S Biology (BPS-17), GGHSS Lora Abbottabad
27. **Miss Jamila Salah Ud Din** S.S Biology (BPS-17), GGHSS Dhakki Charsadda.
28. **Raisa naz** S.S Biology (BPS-17), GGHSS Dagai Swabi
29. **Salma Naz** S.S Biology (BPS-17), GGHSS Takht Bai Mardan
30. **Samra Bibi** S.S Biology (BPS-17), GGHSS Bandi Munim, Haripur.
31. **Seema Rani** S.S Biology (BPS-17), GGHSS Rich Behn Abbottabad.
32. **Sharafat** S.S Biology (BPS-17), GGHSS Baghicha Dheri Mardan.
33. **Shamsun Nishar** S.S Biology (BPS-17), GGHSS Lachi Kohat.
34. **Bibi Amina** S.S Biology (BPS-17), GGHSS Gulshanabad Manerai, Payan Swabi.
35. **Bayina** S.S Biology (BPS-17), GGHSS Kati Garhi Mardan.
36. **Lubna Siraj** S.S Biology (BPS-17), GGHSS Fateh Pur, Swat.
37. **Akhtar** S.S Biology (BPS-17), GGHSS No.9 D.I.Khan.
38. **Naveeda Tariq** S.S Biology (BPS-17), GGHSS Jogiwarra Peshawar.
39. **Mst. Sadia Bibi** S.S Biology (BPS-17), GGHSS Asbanr Dir Lower.
40. **Mst. Bushra Saleem** S.S Biology (BPS-17), GGHSS Sherwan Abbottabad.
41. **Mst. Sara Ihsan** S.S Biology (BPS-17), GGHSS Turangzai, Charsadda.
42. **Mst. Saira Faiz** S.S Biology (BPS-17), GGHSS Khyber Colony Peshawar.
43. **Mst. Nosheen Khan** S.S Biology (BPS-17), GGHSS Gwaleraj Swat.
44. **Nosheen Bibi** S.S Biology (BPS-17), GGHSS Misri Banda, Nowshera.
45. **Mst. Robina Nazli** S.S Biology (BPS-17), GGHSS Matta Swat.
46. **Mst. Parveen Nisa** S.S Biology (BPS-17), GGHSS Kalpani Buner.....(**Respondents**)

Present:

Mr. Muhammad Riaz Swati, Advocate.....For the appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney.....For official respondents

Private respondents No.5 to 46, placed ex-parte vide order dated 27.04.2023

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 14.11.2017, WHEREBY 43 JUNIOR BATCH MATE FEMALE SSTS HAVE BEEN PROMOTED AGAINST THE POST OF SUBJECT SPECIALIST B-17 ON REGULAR BASIS IN THE SUBJECT OF BIOLOGY, SUPERSEDING THE APPELLANT HAVING SENIORITY NO.1023-A WITHOUT ANY FAULT ON THE PART OF APPELLANT AND COMPLETELY WITHOUT ANY

BASIS AND LEGAL JUSTIFICATION, IS ARBITRARY, MALAFE AND WITHOUT LAWFUL AUTHORITY. THUS APPELLANT MAY PLEASE BE PROMOTED AGAINST THE POST OF SUBJECT SPECIALIST BIOLOGY BPS-17 WITH ALL BACK BENEFITS FROM THE DATE OF IMPUGNED NOTIFICATION DATED 14.04.2017 WHEREAS HER JUNIOR BATCHMATE SSTS/RESPONDENT NO.5 TO 46 WERE PROMOTED.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was appointed as Secondary School Teacher on contract basis, which contract was extended for year vide order dated 25.11.2008; that under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009, her services were regularized w.e.f 01.01.2009 on 11.12.2009 and the appellant was placed at Serial No.1023 of the seniority list; that vide impugned Notification dated 14.11.2017, her alleged juniors were promoted to the post Subject Specialist and she was granted personal upgradation from BPS-16 to 17; that feeling aggrieved, she filed departmental appeal on 09.02.2022, but the same was not responded within the statutory period of 90 days; that she moved another written request for issuance of seniority list of SST on the basis of which the impugned promotion Notification dated 14.11.2017 had been made but failed, hence, 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 Deputy 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 Deputy District Attorney controverted the same by supporting the impugned order(s).

5. In the case at hand, the appellant, initially appointed as a Secondary School Teacher on a contractual basis, had her contract extended on November 25, 2008, and subsequently had her services regularized under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2009, effective January 1, 2009. She was positioned at Serial No. 1023 in the seniority list. However, on November 14, 2017, she contested that her juniors were promoted to the role of Subject Specialist and granted personal upgradation from BPS-16 to BPS-17. In response to this perceived injustice, the appellant filed a departmental appeal on February 9, 2022, which was not addressed within the required statutory period of 90 days. Following this, she submitted a further request for the issuance of the seniority list of Secondary School Teachers, as it pertained to the promotions stated in the November 14, 2017 notification, but her request was unsuccessful. Consequently, she initiated the present service appeal, seeking redress for the perceived irregularities in the promotion process and her treatment in the seniority hierarchy.



6. The impugned Notification was passed on 14.11.2017 against which the appellant filed departmental appeal on 09.02.2022 i.e. beyond the provided period of limitation of thirty days. Learned counsel for the appellant made contention in this regard that the official respondents had not communicated the impugned notification. This stance of the appellant is not worth consideration as notification is considered as communication to all. Furthermore, the appellant, while accepting personal upgradation, did not raised any objection that she had been made junior. However, the main issue in this case is the limitation as when the departmental appeal is barred by time, the appeal before the Tribunal is deemed as incompetent. 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 obliged 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 above, instant service appeal, being barred by time, is dismissed with costs.

8. Before parting with, we find that, like others, in this case also the department has not seriously contested the case to protect the interest of the Government. It was good luck of the Government that the appeal is being dismissed on the point of limitation otherwise, the reply and the not well-versed representative of the respondents shows that the department is hands in gloves with the appellant. Copy of this order sheet be sent to the Principal Secretary to the worthy Chief Minister, Khyber Pakhtunkhwa, Chief Secretary, Khyber Pakhtunkhwa, Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Khyber Pakhtunkhwa, with the observations that a number of departmental representatives appearing before the Tribunal do not know facts of the cases nor in possession of the record. Similarly, in majority of the cases, it seems that in order to benefit the appellant, evasive denials are made by the department, while preparing reply/comments. We have seen in this case also

evasive denial and least interest of the department in pursuing it and/or in protecting/defending the interest of the Government. Besides, totally, an unaware official put appearance who not only wastes the time of the Tribunal, but also becomes burden on the Government by claiming TA/DA while of no assistance to the Tribunal. Consign.

9. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 29th day of October, 2024.*


KALIM ARSHAD KHAN
Chairman


RASHIDA BANO
Member (Judicial)

Muzam Shah


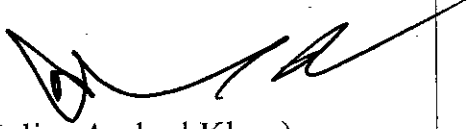
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.918/2022

Mst. Saima Naz

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-14 29 th October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Riaz Swati, Advocate on behalf of appellant.2. Mr. Asif Masood Ali Shah, Deputy District Attorney on behalf of official 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 Abbottabad and given under our hands and the seal of the Tribunal on this 29th day of October, 2024</i></p> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p><small>*Mutazem Shah*</small></p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.918/2022

Date of presentation of Appeal 30.05.2022
Date of hearing 29.10.2024
Date of Decision 29.10.2024

Saima Naz d/o Muhammad Irfan Secondary School Teacher Government Girls
Community Model School Faqirabad Tajal,
Mansehra.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Chief Secretary, Peshawar.
2. **Secretary to Government of Khyber Pakhtunkhwa** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 14.11.2017, WHEREBY 43 JUNIOR BATCH MATE FEMALE SSTs HAVE BEEN PROMOTED AGAINST THE POST OF SUBJECT SPECIALIST B-17 ON REGULAR BASIS IN THE SUBJECT OF BIOLOGY, SUPERSEDING THE APPELLANT HAVING SENIORITY NO.1023-A WITHOUT ANY FAULT ON THE PART OF APPELLANT AND COMPLETELY WITHOUT ANY BASIS AND LEGAL JUSTIFICATION, IS ARBITRARY, MALAFE AND WITHOUT LAWFUL AUTHORITY. THUS APPELLANT MAY PLEASE BE PROMOTED AGAINST THE POST OF SUBJECT SPECIALIST BIOLOGY BPS-17 WITH ALL BACK BENEFITS FROM THE DATE OF IMPUGNED NOTIFICATION DATED 14.04.2017 WHEREAS HER JUNIOR BATCHMATE SSTs/RESPONDENT NO.5 TO 46 WERE PROMOTED.


PRESENT


1. Mr. Muhammad Riaz Swati, Advocate, for the Appellant
2. Mr. Asif Masood Ali Shah, Deputy 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 29th day of October 2024.


Rashida Bano
Member (Judicial)


Karim Arshad Khan
Chairman