

Service Appeal No. 61/2024 titled "Hazrat Noman versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal No. 62/2024 titled "Haq Nawaz versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others" declared on 20.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp court, Abbottabad.

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."

09. In view of the above, instant service appeals, being barred by time, are dismissed with costs. Consign.

10. Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 30th day of October, 2024.



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Service Appeal No.61/2024 titled "Hazrat Noman versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal No. 62/2024 titled "Haq Nawaz versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others" declared on 20.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp court, Abbottabad.

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

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06 The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

07. The appellants, Hazrat Noman and Haq Nawaz, have brought forward their case wherein they claim that Hazrat Noman was appointed as a Certified Teacher and Haq Nawaz as an Arabic Teacher, both in BPS-15. Both appellants, hailing from District Upper Kohistan, were serving in their respective districts at the time of the dispute. According to the appellants, an order dated 21.06.2023 was issued, wherein their juniors, in the same cadres, were granted promotions; however, the appellants were excluded from this promotional relief. Aggrieved by this alleged omission, they filed departmental appeals on 12.07.2023, seeking redress, but the same were not responded to. As a result, the appellants have now approached the court through the instant service appeals, challenging the inaction on their grievances and seeking appropriate relief.

08. The original order of promotion was passed on 21.06.2023 against which they filed departmental appeals on 12.07.2023, but the same were not responded, therefore, they approached this Tribunal by filing the instant service appeals on 03.01.2024 i.e. beyond the prescribed period of limitation. The departmental appeals of the appellants are within time, however, they have approached this Tribunal at a belated stage. We in this respect rely



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21.06.2023 WHEREBY ALL JUNIORS TO THE APPELLANTS WERE PROMOTED (EXCLUDING THE APPELLANTS) WHILE RESPONDENT NO.1 FAILED TO RESPOND APPELLANT'S DEPARTMENTAL APPEAL/REPRESENTATION FILED THERE-AGAINST.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above two appeals, are jointly taken up, as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Appellants' cases in brief, as per averments of appeals are that appellant namely Hazrat Noman was appointed as Certified Teacher while Haq Nawaz was as Arabic Teacher in BPS-15; that they, being residents of the District Upper Kohistan, were serving in their respective district; that vide order dated 21.06.2023 alleged juniors in their cadres, were granted promotions, however, they were excluded from such relief; that feeling aggrieved they filed departmental appeals on 12.07.2023 but the same were not responded, hence, the instant service appeals.

03. On receipt of the appeals and their admission to full hearing, the respondents were summoned who put appearance and contested the appeals by filing replies. The defense setup was a total denial of the claim of the appellants.

04. We have heard learned counsel for the appellants and learned Deputy District Attorney for respondents.



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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.61/2024

Date of presentation of Appeal.....03.01.2024
Date of Hearing.....30.10.2024
Date of Decision.....30.10.2024

Hazrat Noman son of Ahmed resident of Zoz Bond P/O Seo Gather Tehsil Dasu District Upper Kohistan presently posted as CT GMS Komela Upper Kohistan.....(***Appellant***)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **Director** Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Male)** Kohistan Upper at Dassu.....(***Respondents***)

Service Appeal No.62/2024

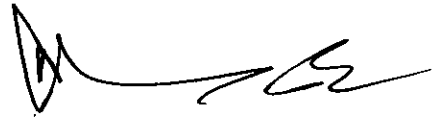
Date of presentation of Appeal.....03.01.2024
Date of Hearing.....30.10.2024
Date of Decision.....30.10.2024

Haq Nawaz son of Hijab Khan resident of Zoz Bond P/O Seo Gather Tehsil Dasu District Upper Kohistan presently posted as AT GMS Komela Upper Kohistan.....(***Appellant***)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **Director** Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Male)** Kohistan Upper at Dassu.....(***Respondents***)

Present:



Mr. Sardar Muhammad Irshad, Advocate.....For the appellants
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE OFFICE ORDER DATED

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.61/2024

Date of presentation of Appeal 03.01.2024
Date of hearing 30.10.2024
Date of Decision 30.10.2024

Hazrat Noman son of Ahmed, resident of District Upper Kohistan
.....**Appellant**

Versus

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

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974


PRESENT


1. Mr. Sardar Muhammad Irshad, 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 30th day of October 2024.


Rashida Hano
Member (Judicial)


Kalim Arshad Khan
Chairman



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.61 of 2023

Hazrat Noman

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><u>Order-07</u> 30th October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Sardar Muhammad Irshad, Advocate, on behalf of appellant.2. Mr. Asif Masood Ali Shah, Deputy District Attorney on behalf of respondents. <p><u>Kalim Arshad Khan, Chairman:</u> Vide our consolidated 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 30th 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>