

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

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

Service Appeal No.876/2022

Date of presentation of Appeal.....02.06.2022

Date of Hearing.....30.10.2024

Date of Decision.....30.10.2024

Rafaqat Ali son of Muhammad Akhtar resident of Batangi Nagri,
Total, Tehsil Havelian, District Abbottabad.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. **Director** Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. **District Education Officer (Female)** Abbottabad.....(**Respondents**)

Present:

Mr. Shehzad Shakoor, Advocate.....For the appellant

Mr. Umair Azam, Additional Advocate General.....For respondents

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

JUDGMENT



KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was serving as Lab Attendant in the Education Department; that on the ground of absence, he was dismissed from service vide order dated 09.09.2015 which was assailed by the appellant before this Tribunal by filing the Service Appeal No.27/2016 and this Tribunal vide its judgment dated

22.02.2019, ordered for reinstatement of the appellant into service and conducting of de-novo inquiry; that de-novo inquiry was conducted by the respondents and vide order dated 02.09.2019 he was reinstated into service, however, the intervening period was treated as EOL (Leave without pay) on the ground of no work no pay; that feeling aggrieved, he filed departmental appeal on 26.09.2019 but the same was not responded, 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 Additional Advocate General 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 Additional Advocate General controverted the same by supporting the impugned order(s).

5. The appellant, who was serving as a Lab Attendant in the Education Department, was dismissed from service on 09.09.2015 due to his absence. He challenged this dismissal before the Tribunal by filing Service Appeal No.27/2016, and the Tribunal, in its judgment dated 22.02.2019, directed the appellant's reinstatement into service along with a de-novo inquiry into the matter. Consequently, a de-novo inquiry was conducted, and the appellant was reinstated into

service on 02.09.2019. However, the intervening period of his absence was treated as EOL (Leave Without Pay), citing "no work no pay" as the reason. Dissatisfied with this decision, the appellant filed a departmental appeal on 26.09.2019, which went unanswered. This led to the filing of the present service appeal.

6. The impugned order was passed on 02.09.2019, against which the appellant filed departmental appeal on 26.09.2019 but the same was not responded. Thereafter, he filed another departmental appeal as well, but, there is no provision of second departmental appeal in the law and the Act, rather the appellant ought to have knocked at the door of this Tribunal within 30 days, after passage of the statutory period of ninety days filing the departmental appeal. The appellant has approached the Tribunal by filing the instant service appeal, on 02.06.2022 that is much beyond the prescribed period of limitation. 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. Consign.
8. 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)

Mutazem Shah

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.876 of 2022

Rafaqat 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-15 30 th October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Shahzad Shakoor, Advocate, on behalf of appellant.2. Mr. Umair Azam, Additional Advocate General on behalf of 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 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>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.876/2022

Date of presentation of Appeal 20.06.2022
Date of hearing 30.10.2024
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Rafaqat Ali, son of Muhammad Akhtar, resident of Batangi, Nagri, Abbottabad
.....*Appellant*

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974


PRESENT

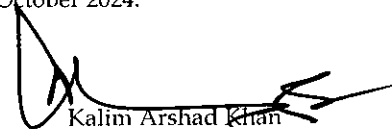
1. Mr. Shahzad Shakoor, , Advocate, for the Appellant
2. Mr. Umair Azam, Additional Advocate General, for respondents

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. 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.


Rashid Bano
Member (Judicial)


Kalim Arshad Khan
Chairman