

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.1674/2023

Date of presentation of Appeal.....17.08.2023

Date of Hearing.....07.11.2024

Date of Decision.....07.11.2024

Wahid Gul Ex-constable S/O Abdul Khaliq R/O Kuki Khel, Jamrud
Khyber Agency.....(*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
2. **Provincial Police Officer**, Khyber Pakhtunkhwa, Peshawar
3. **Capital City Police Officer**, Peshawar.
4. **District Police Officer**, Khyber.....(*Respondents*)

Present:

Mr. Amin Ur Rehman Yousafzai, Advocate.....For the appellant

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

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 18.10.2021 WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE, AGAINST THE ORDER DATED 27.02.2023 VIDE WHICH DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED AND AGAINST THE ORDER DATED 23.06.2023 WHEREBY THE REVISION PETITION OF THE APPELLANT HAS BEEN DISMISSED AND ORDER DATED 18.10.2021 OF RESPONDENT WAS UPHELD.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case,

as per averments of the appeal, are that appellant was appointed as

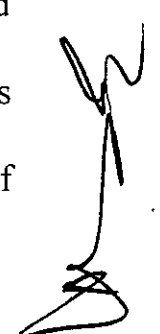
Khasadar in the Khasadar Force; that upon 25th Amendment Act, 2018 vide Notification dated 13.02.2020, he was absorbed in the Police Department; that vide order dated 30.05.2020, he was dismissed from service, in response to his departmental appeal, he was reinstated into service vide order dated 21.01.2021; that he was suspended vide order dated 03.06.2021, but that order was withdrawn on 07.10.2021; that after passing of ten days, vide impugned order dated 18.10.2021, he was dismissed from service; that feeling aggrieved, he filed departmental appeal on 26.08.2022 which was dismissed vide order dated 27.02.2023; that he filed revision petition but that was also dismissed vide order dated 23.06.2023, therefore, appellant filed 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 Assistant 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

5. The appellant was initially appointed as a Khasadar in the Khasadar Force and, following the 25th Amendment Act, 2018, was



absorbed into the Police Department under a Notification dated 13.02.2020. His service was disrupted when he was dismissed from service on 30.05.2020. In response to his departmental appeal, he was reinstated into service through an order dated 21.01.2021. Subsequently, the appellant was suspended on 03.06.2021, but this suspension was revoked on 07.10.2021. Just ten days later, on 18.10.2021, the appellant was again dismissed from service. Aggrieved by this dismissal, the appellant filed a departmental appeal on 26.08.2022, which was rejected by the authorities through an order dated 27.02.2023. He then filed a revision petition, but that too was dismissed on 23.06.2023. As a result, the appellant has now filed the present service appeal.

6. The case highlights a pattern of procedural inconsistencies, including repeated dismissals, reinstatements, and suspensions, and raises concerns about the fairness and transparency of the disciplinary actions taken against the appellant. However, we are at present concerned with the last order of his dismissal which was passed on 18.10.2021, against which he filed departmental appeal on 26.08.2022 i.e. ten months and eight days. While the appellant was bound to file the departmental appeal within thirty days of the passage of impugned order. The remaining struggle of filing revision petition seems fruitless as Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 guides that a civil servant shall file departmental appeal within thirty days of original order from which he feels aggrieved. Reliance can also be placed 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 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. In view of above, instant service appeal, being barred by time, is dismissed with costs. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 7th day of November, 2024.*



KALIM ARSHAD KHAN
Chairman




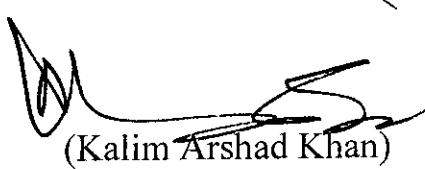
RASHIDA BANO
Member (Judicial)

Mutazem Shah

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.1674/2023

Wahid Gul 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-09 7 th November, 2024.	<p><u>Kalim Arshad Khan, Chairman</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Mr. Kabir Ullah Khattak, Advocate, Advocate, on behalf of appellant.2. Mr. Naseer Ud Din Shah, Assistant Advocate General on behalf of respondents. <p>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 Peshawar and given under our hands and the seal of the Tribunal on this 7th day of November, 2024</i></p> <p> (Rashida Bano) Member (J)</p> <p> (Kalim Arshad Khan) Chairman</p> <p><small>*Atulazem Shah*</small></p>



MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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


PRESENT

1. Mr. Kabirullah Khattak, 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 7th day of November, 2024.


Rashid Rano
Member (Judicial)


Kalim Ashad Khan
Chairman