

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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

*Service Appeal No.1641/2022*

Date of presentation of Appeal.....17.11.2022  
Date of Hearing.....04.11.2024  
Date of Decision.....04.11.2024

**Niaz Shah** S/O Syed Rahim Shah Ex-Constable No.456 R/O Dara Syedan Manshera.....(**Appellant**)

Versus

1. **The District Police Officer, Manshera.**
2. **The Regional Police Officer, Hazara Region, Abbottabad.**
3. **The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar**  
.....(**Respondents**)

Present:

Mr. Kabirullah Khattak, 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 12.04.2016 WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 04.09.2022 WHICH HAS BEEN DECIDED ON 15.09.2022 ON NO GOOD GROUNDS.**

**JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:** Brief facts of the case, as per averments of the appeal, are that appellant was appointed as Constable in the Police Department, in the year 2000; that in the year 2011, he applied for Ex-Pakistan study leave for one year which was

granted vide order dated 29.03.2011; that on expiry of one year leave, he again applied for further three years study leave which was also granted vide order dated 26.07.2012; that upon completion of three years leave, he had allegedly to stay abroad for more two years for study; that for the purpose, he applied for more two years leave without pay (EOL) via FAX; that, when the appellant returned to Pakistan in the year 2022, he came to know that he had been dismissed from service vide order dated 12.06.2016; that feeling aggrieved, he filed departmental appeal on 04.09.2022 which was rejected on 15.09.2022; that he filed revision petition on 03.10.2022 but that effort also remained fruitless, 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 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, appointed as a Constable in the Police Department in 2000, was granted study leave on two separate occasions, first for one year in 2011, and subsequently for three years

in 2012. After completing the three years of study leave, the appellant applied for an additional two years of leave without pay (EOL) via fax, intending to continue his studies abroad. However, upon returning to Pakistan in 2022, the appellant came to know that he had been dismissed from service on 12.06.2016, a decision that had been taken while he was abroad. The appellant filed a departmental appeal on 04.09.2022, which was rejected on 15.09.2022. He then filed a revision petition on 03.10.2022, but it also remained unresolved. Consequently, the appellant filed the present service appeal, challenging his dismissal and the rejection of his appeals.

6. The impugned order was passed on 12.04.2016, when the appellant was abroad, against which the appellant filed departmental appeal dated 04.09.2022 on returning to Pakistan which is hopelessly time barred as the prescribed period of limitation for filing departmental appeal is thirty days, while the appellant has filed the same after passage of almost six years. 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 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 4<sup>th</sup> day of November, 2024.



**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

\*Mutazem Shah\*

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No.1641/2022**

Date of presentation of Appeal 17.11.2022  
Date of hearing 04.11.2024  
Date of Decision 04.11.2024

Niaz Shah S/O Syed Rahim Shah Ex-Constable No.456 R/O Dara Syedan  
Mansehra.....(Appellant)

Versus

1. The District Police Officer, Manshera.
2. The Regional Police Officer, Hazara Region, Abbottabad.

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


**PRESENT**

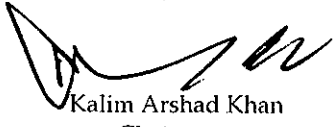
1. Mr. Kabirullah Khattak, Advocate, for the Appellant
2. Mr. Asif Masood Ali Shah, Deputy District Attorney, for respondents

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
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

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 4<sup>th</sup> day of November, 2024.



  
Rasheed Bano  
Member (Judicial)

  
Kalim Arshad Khan  
Chairman

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No.1641/2022

Niaz Shah versus Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
Order-14 4th November, 2024.	<p><b><u>Kalim Arshad Khan, Chairman</u></b></p> <p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Kabir Ullah Khattak, Advocate, Advocate, on behalf of appellant.</li><li>2. Mr. Naseer Ud Din Shah, Assistant Advocate General on behalf of respondents.</li></ol> <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 4<sup>th</sup> day of November, 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>*Adutizen Shah*</small></p>


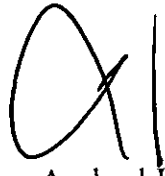
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No.1641 of 2022

Niaz Shah

versus

Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
<u>Order-13</u> 31 <sup>st</sup> October, 2024.	<p>Present:</p> <ol style="list-style-type: none"><li>1. Nobody is present on behalf of appellant.</li><li>2. Mr. Umair Azam, Additional Advocate General for the respondents.</li></ol> <p>1. Being an old case of the year 2022, the same be fixed for hearing at the Principal Seat, Peshawar, for hearing on 04.11.2024 before D.B.</p> <p>P.P given to the AAG.</p> <p> (Rashida Bano) Member (J) *Mutazem Shah* Camp Court, Abbottabad</p> <p> ( Kalim Arshad Khan) Chairman Camp Court, Abbottabad</p>



28<sup>th</sup> June 2024

1. Appellant in person present. Mr. Arshad Azam, Assistant Advocate General for the respondents present.

2. Former made a request for adjournment as his counsel was not available today. Adjourned. To come up for arguments on 26.09.2024 before D.B at Camp Court, Abbottabad. P.P given to the parties.

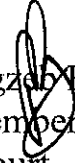
SCANNED

Fe. Star

\*Mutazem Shah\*



(Fareeha Paul)  
Member (E)  
Camp Court, Abbottabad



(Aurangzeb Khattak)  
Member (J)  
Camp Court, Abbottabad

26<sup>th</sup> Sept, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

2. Formal requested for adjournment in order to prepare the brief. Adjourned by way of last chance. To come for arguments on 31.10.2024 before D.B at camp court Abbottabad. P.P given to the parties.



(Fareeha Paul)  
Member(J)



(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad

\*Adnan Shah. P.A\*