

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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

***Service Appeal No.1198/2022***

Date of presentation of Appeal.....01.08.2022  
Date of Hearing.....04.11.2024  
Date of Decision.....04.11.2024

**Mr. Mukaram Khan** Ex-Section Officer (litigation) Establishment Department, presently Section Officer, Finance Department.  
.....(**Appellant**)

Versus

1. **The Provincial Government** through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. **The Chief Secretary** Government of Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment, Khyber Pakhtunkhwa, Peshawar**  
.....(**Respondents**)

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***Service Appeal No.1605/2022***

Date of presentation of Appeal.....11.10.2022  
Date of Hearing.....04.11.2024  
Date of Decision.....04.11.2024

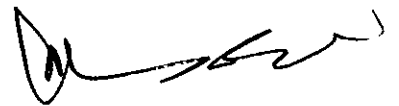
**Mr. Muhammad Azhar Khan** Section Officer (litigation) Establishment Department.  
.....(**Appellant**)

Versus

1. **The Provincial Government** through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. **The Chief Secretary** Government of Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment, Khyber Pakhtunkhwa, Peshawar**  
.....(**Respondents**)

Present:

Syed Noman Ali Bukhari, Advocate.....For the appellants  
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For respondents



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**APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION DATED 18.05.2018 WHEREBY THE APPELLANTS WERE PROMOTED TO THE POST OF PMS OFFICER (BPS-17) WITH IMMEDIATE EFFECT INSTEAD OF THE DATE OF ELIGIBILITY OR**

*Service Appeal No.1198/2022 titled "Mukaram Khan versus The Provincial Government through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal No.1605/2022 titled "Muhammad Azhar Khan The Provincial Government through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" declared on 04.11.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

**OCCURRENCE OF THE VACANCY ETC AND AGAINST NOT DECIDING THE DEPARTMENTAL APPEALS OF THE APPELLANTS WITHIN STATUTORY PERIOD OF 90 DAYS.**

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**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 appellants were appointed as Assistants through Khyber Pakhtunkhwa Public Service Commission, vide order dated 28.05.1998; that on 08.11.2017 meeting for promotion to the post was held wherein, appellants were also included; that some others were promoted despite their alleged ineligibility and the appellants were given promotions to Provincial Management Service (BPS-17) vide order dated 18.05.2018 but with immediate effect and not from the date of occurrence of vacancy; that feeling aggrieved, they filed departmental appeals on 11.04.2022 (by Mukaram Khan) and 20.07.2022 (by Muhammad Azhar Khan) but the same were not responded, therefore, they filed 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.

05. 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).

06. The appellants were appointed as Assistants through the Khyber Pakhtunkhwa Public Service Commission on 28.05.1998. In a meeting held on 08.11.2017 regarding promotions, the appellants were included in the list for consideration. However, despite the alleged ineligibility of some officers, they were promoted, while the appellants were subsequently promoted to the Provincial Management Service (BPS-17) through an order dated 18.05.2018. Notably, the appellants' promotions were made with immediate effect, rather than from the date of occurrence of the vacancy, which they contend was unjust. Aggrieved by the manner of their promotion, the appellants filed departmental appeals—Mukaram Khan on 11.04.2022 and Muhammad Azhar Khan on 20.07.2022—but both appeals remained unanswered. Consequently, the appellants have filed the present service appeals, challenging the delay in addressing their grievances and the terms of their promotion.

07. The original order of promotion was passed on 18.05.2018 against which they filed departmental appeals in the year 2022 which are hopelessly barred by time. They ought to have filed their

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departmental appeals within 30 days of passing the promotion order. But they have failed to do so and filed the same at a belated stage. 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*



*Service Appeal No.119S/2022 titled "Mukaram Khan versus The Provincial Government through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal No.160S/2022 titled "Muhammad Azhar Khan The Provincial Government through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others" declared on 04.11.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

*for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself."*

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

09. 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.



04/11/24

**KALIM ARSHAD KHAN**  
Chairman



**RASHIDA BANO**  
Member (Judicial)

\*Amazem Shah\*


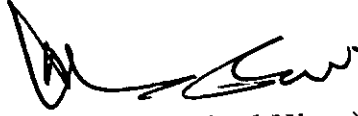
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No.1198 of 2022

Mukaram Khan

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-18 4 <sup>th</sup> November, 2024.	<p><b><u>Kalim Arshad Khan, Chairman</u></b></p> <p>Present:</p> <ol style="list-style-type: none"><li>1. Syed Noman Ali Shah, Advocate, on behalf of appellant.</li><li>2. Mr. Asif Masood Ali Shah, Deputy District Attorney on behalf of respondents.</li></ol> <p>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 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>*Mutazem Shah*</small></p>



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service appeal No. 1198/2022

Mukaram Khan

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>Order-17 4<sup>th</sup> November, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none"><li>1. Miss. Uzma Syed, Advocate junior to Mr. Noman Ali Bukhari, Advocate on behalf of the appellant.</li><li>2. Syed Naseer Ud Din Shah, Assistant Advocate General assisted by Mr. Riaz Khan, Superintendent as representative with authority letter for respondents.</li><li>3. Former requested for adjournment on the ground that learned senior counsel is not available today. Since the case pertains to the year 2022, therefore, let it be adjourned for tomorrow i.e. on 05.11.2024 for arguments before D.B. P.P given to the parties.</li></ol> <p style="text-align: center;"> (Rashida Bano) Member (J)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p>*Adnan Shah*</p>



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

**Service Appeal No.1198/2022**

Date of presentation of Appeal 10.11.2022  
Date of hearing 04.11.2024  
Date of Decision 04.11.2024

Mr. **Mukaram Khan**, Ex-Section Officer Establishment Department  
.....(**Appellant**)

Versus

1. **The Provincial Government**, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **The Secretary Establishment**, Khyber Pakhtunkhwa, Peshawar.  
.....(**Respondents**)

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


**PRESENT**

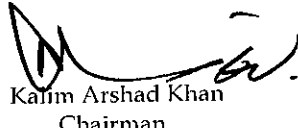
1. Syed Noman Ali Bukhari, Advocate, for the Appellant
2. Mr. Asif Masood Ali Shah, Deputy District Attorney, for respondents

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.

  
Rashida Bano  
Member (Judicial)

  
Kalim Arshad Khan  
Chairman